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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 510

PAUL KNAUER, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 83–96) is reported at 149 F. 2d 519. The findings of fact and conclusions of law of the district court appear at pages 19–43 of the record.[1]

JURISDICTION

The judgment of the circuit court of appeals was entered May 29, 1945 (R. 96), and a petition

[1] References to the printed record are designated as "R." References to the stenographic transcript of the proceedings of petitioner's individual trial are designated as "Tr." References to the consolidated transcript are designated as "Con. Tr."

for rehearing was denied June 28, 1945 (R. 97). On September 22, 1945, petitioner's time to file a petition for a writ of certiorari was extended by Mr. Justice Rutledge to October 15, 1945 (R. 100). The petition for a writ of certiorari was filed October 15, 1945 and was granted December 10, 1945 (R. 100). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the evidence establishes beyond a troubling doubt that petitioner committed fraud when he foreswore allegiance to the German Reich and took an unqualified oath of allegiance to the United States.

2. Whether a certificate of naturalization may be cancelled upon proof that the applicant committed fraud in taking the oath of allegiance.

3. Whether the evidence establishes beyond a troubling doubt that petitioner committed fraud when he represented that he was attached to the principles of the Constitution of the United States.

4. Whether a certificate of naturalization may be cancelled upon proof that the applicant committed fraud in representing his attachment to the principles of the Constitution of the United States.

STATUTES INVOLVED

The pertinent statutory provisions appear in the Appendix, *infra*, pp. 113–115.

STATEMENT

Petitioner, a native of Germany, arrived in this country in April 1925. He filed his declaration of intention to become a citizen in December 1929 and his petition for naturalization on November 20, 1936. He took the oath of allegiance and was admitted to citizenship on April 13, 1937. (Ex. PK 1; Tr. 21–22; Fdg. 28, R. 30.)

In February 1943, the United States, proceeding under Section 338 of the Nationality Act of 1940, 8 U. S. C. 738 (*infra*, pp. 113–114), instituted a suit in the District Court for the Eastern District of Wisconsin to cancel petitioner's certificate of naturalization on the ground that it had been secured by fraud in that petitioner had falsely and fraudulently alleged in his petition that he was attached to the principles of the Constitution of the United States and had taken a false oath of allegiance (R. 1–3). On motion of the United States Attorney (R. 11–15), the proceeding against petitioner and thirteen other persons were consolidated, pursuant to Rule 42 (a), F. R. Civ. P., for the purpose of receiving evidence common to each case concerning the organization, aims, and activities of the German-American Bund and its affiliates (R. 16–18). After the consolidated trial on this issue, the district judge entered findings of fact and conclusions of law, in which he concluded that the Bund and its predecessors were un-American and subversive,

and that their teachings were contrary to the principles of the Constitution of the United States, but that the fact that a person was a member of the local unit of the Bund was not in itself sufficient to prove such fraud as would warrant cancellation of a decree of naturalization (R. 19–27).

Thereafter, petitioner's case was tried individually. At the conclusion thereof, the district court entered detailed findings of fact (R. 30–42), on the basis of which he concluded that petitioner's certificate of naturalization was "fraudulently and therefore illegally procured" and should be cancelled (R. 43).[2] The judgment cancelling the certificate of naturalization was affirmed on appeal (R. 96).

The evidence for the Government may be summarized as follows:

When petitioner came to this country in 1925, he was 30 years old. He had served in the German army during World War I and had received the Iron Cross. Thereafter he studied law and economics in Germany for three years (Tr. 156–157; Fdg. 27, R. 30). He settled in Milwaukee, Wisconsin, and conducted his own insurance business there (Tr. 466–467, 480).

As early as 1931, petitioner told an acquaintance who came from the same town in Germany

[2] Petitioner was the only one of the fourteen defendants involved in the consolidated trial whose certificate was ordered cancelled (R. 84).

that the Nazi party in Germany was progressing and that its aims were admirable. He said that when the witness had resided in this country longer he would realize that it was necessary to have the same party here because of the Jews and Communists. (Tr. 503–505; Fdg. 29, R. 30.) A witness who saw the petitioner regularly in the years 1931 to 1933 testified that petitioner blamed Germany's downfall on Jewish capital; that he disliked the Weimar Constitution, and was opposed to any republican form of government (Tr. 445–446).

Petitioner visited Germany from May to November 1934 (Tr. 158–159). While there he read the German edition of *Mein Kampf* (Tr. 377–378; Fdg. 30, R. 30). He apparently spoke to German officials about the exhibition of German films in the United States for, in January 1935, the Federation of German-American Societies in Wisconsin received a letter from the German Consul who stated that he would comply with petitioner's request, made in Berlin, for free delivery of films (Tr. 461–462; Fdg. 32, R. 31). Upon his return, petitioner proudly reported to a friend that he had been presented to Hitler (Tr. 473; Fdg. 30, R. 30). He also told two of his acquaintances that he had been offered a position with the German government at 600 marks per month (Tr. 449, 484; Fdg. 30, R. 30–31). He asked another

witness, who had been interested in the case of two brothers convicted of draft evasion in the First World War, to write an article on the case for publication in Germany, in order to show that "people under totalitarianship can better live than under a democracy" (Tr. 56–458).

After his return from Germany, petitioner spoke enthusiastically of the accomplishments of the Hitler regime (Tr. 447–449, 466–469, 628). He said that Hitler was the savior of Germany, that he had solved the unemployment problem, whereas this country was suffering because of Jewish capitalism (Tr. 466–467, 469, 473; Fdg. 30, R. 30–31). He praised the totalitarian form of government and the Nazi Youth Organization (Tr. 447–448; Fdg. 30, R. 30–31). In 1936, when one witness showed him a book describing treatment of prisoners in German concentration camps, petitioner threw the book back and told the witness that he would be thrown out if he called again (Tr. 451). In 1937, when another witness suggested that there was no unemployment in Germany because Hitler had killed so many workers, petitioner became excited, called the witness a communist, and suggested that his relatives in Germany would all go to a concentration camp (Tr. 629–630).

During the winter of 1934–1935, petitioner was active in obtaining contributions to the German

Winter Relief Fund (Tr. 375–376, 418–419; Fdg. 31, R. 31), an official agency of the German government under the direction of the Minister of Propaganda and Enlightenment, for which German Consulates solicited money in the United States in order to obtain foreign exchange (Tr. 406, 409–410, 412). Petitioner forwarded the money collected to the German Consul in Chicago (Tr. 368).

The Friends of New Germany, known after 1936 as the German-American Bund, had a branch in Milwaukee. Its leader was George Froboese, who was also Midwestern Gauleiter, and later national leader of the Bund. (Con. Tr. 77, 359, 383–385, 467, 495, 969–970.) The findings of the trial judge on the consolidated trial, that the Bund espoused the political philosophy of National Socialism as taught, advocated and practiced by Nazi Germany, that such theories were incompatible with a democratic form of government, and that they required allegiance to Hitler and Germany irrespective of foreign citizenship (Findings 12, 14, 16 (R. 23–24)), are amply supported by evidence[3] and are not here challenged. Petitioner denied membership in the Bund (Tr. 365). He was, however, shown to have participated in Bund meetings in 1936 (Tr. 681–682, 685–686;

[3] Con. Tr. 74, 87, 138–140, 144–146, 267–269, 278, 355, 387–389, 438–439, 450–451, 587, 618–623, 813, 927, 987.

Fdg. 42, R. 35)[4] and, in the summer of 1936, he and his family had a tent at the Bund camp (Tr. 470–471; Fdg. 42, R. 35). He defended the Bund to a friend who appeared as a witness for him at the time of his naturalization (Tr. 489).

In October 1936, petitioner enrolled his 10-year old daughter in the *Jugendschaft,* the Youth Movement of the Bund (Tr. 361, 597; Con. Tr. 597–599; Fdg. 45, R. 37). This was a group organized pursuant to instructions from national Bund Headquarters to instill the ideology of National Socialism in the minds of children of German descent. (Fdgs. 21, 45, R. 26, 36–37). It was patterned after the Hitler Youth Movement in Germany (Con. Tr. 108, 112, 248–252, 423–428, 791, 922–924). The children wore uniforms and were taught to salute with the raised arm, using the greeting "Heil" (Tr. 604; Con. Tr. 791, 921–924).[5] Home evenings were conducted at which National Socialism, the life of Horst Wessel, and

[4] In 1935 national Bund leaders instructed German nationals to retire from the organization, but a Prospective Citizens' League was formed which German nationals could join and which entitled them to all the privileges of members (Con. Tr. 242–244, 405–406). There were also sympathizer members, persons who for various reasons were afraid to assume membership openly, and who were allowed to join under an assumed name (Con. Tr. 395–397, 406; Tr. 529–531; Fdg. 49, R. 38).

[5] The Bund originally used the greeting "Heil Hitler," but in July 1933 changed to "Heil" or "Sieg Heil" (Con. Tr. 179–180). In 1938 the greeting "Free America" was adopted (Ex. 36A, Con. Tr. 364).

other similar topics were discussed (Tr. 605–606, 616–617). The group was taught the Horst Wessel Song and other songs of allegiance to Hitler (Con. Tr. 924–927). It regularly participated in a solstice ceremony in which a large swastika was burned to signify the unity of the German people everywhere (Con. Tr. 927, 1397). Petitioner attended meetings of the Youth Group in Milwaukee and at the Bund camp (Tr. 597, 606; Fdg. 45, R. 36–37).

There existed in Wisconsin a Federation of German-American Societies, organized in 1931 to coordinate the work of the numerous German organizations in that region (Tr. 413–414). In 1935 it had about 70 affiliated organizations having a total membership of approximately 8,000 (Tr. 414; Fdg. 34, R. 31). Petitioner was a delegate to the Federation (Tr. 416, 418), and at a meeting in 1935, he instructed another delegate to cease distributing pamphlets opposing the Nazi form of government (Tr. 497; Fdg. 33, R. 31). It was the policy of the Friends of New Germany and of the Bund to infiltrate into the older German societies and to induce them to show their sympathy with the Hitler Government by displaying a swastika flag at public functions (Con. Tr. 143, 443). This policy was followed by the Milwaukee Unit of the Bund (Con. Tr. 974–975; see also Con. Tr. 754–755). Continuously from 1933 to 1936, Froboese, the leader of the Bund, and others en-

deavored to have the swastika flag displayed at important celebrations of the Federation, and petitioner joined in that effort (Tr. 416–418).

On May 31, 1935, petitioner made a motion to have the Federation recognize the swastika as a flag of the German Reich, although it was not the official German flag at that time (Tr. 421–422, 435–436).[6] It was decided to have the affiliated organizations vote on the flag question; when this was done a majority voted against display of the swastika (Tr. 423–424). At the meeting at which the vote was reported, Froboese became abusive and was ordered out (Tr. 424–425; Fdg. 34, R. 31). Froboese and a few organizations withdrew from the Federation at that time, including an organization of German veterans known as the Krieger Kamaradschaft (Tr. 425).[7] Petitioner apparently did not then withdraw from the Federation. The swastika flag was raised at the German Day celebration in 1936 without approval by the Federation, and a disturbance ensued in which men in Bund uniform participated (Tr. 427–428, 430–431, 450; Fdg. 36, R. 32). At the next meeting of the Federation, petitioner proposed a vote of confidence in the Chairman of the

[6] The swastika flag was not officially recognized as the German national flag until September 1935 (Tr. 460).

[7] The Krieger Kamaradschaft thereafter used the swastika as its official emblem (Ex. PK 193; Tr. 352, 526). Petitioner became president of the Kamaradschaft in 1938 (Tr. 160, 525). When he joined the society does not appear.

Entertainment Committee, a motion which was understood to mean approval of the showing of the swastika flag. The motion failed and a vote of censure was taken (Tr. 428, 430, 498; Fdg. 36, R. 32). The Chairman, Voight, thereupon resigned (Tr. 430).

Following this incident, Froboese and others discussed the formation of a German-American Citizens Alliance to compete with the Federation (Tr. 523–524, 534–535; Fdg. 36, R. 32). The Alliance was formally organized around January 1937 (Tr. 555, see also Tr. 75; Fdg. 36, R. 32). Among the early attendants at the meetings were well known members of the Friends of New Germany and the Bund (Tr. 544–546), including Voight who had resigned from the Federation after the vote of censure (Tr. 103; see Fdg. 37, R. 32). The constitution and articles of incorporation of the Alliance provided that, upon dissolution, all of its assets were to become the property of the Deutsches Auslands-Institut (Ex. PK 12, PK 14; Tr. 161–162),[8] a German government agency for the dissemination of propaganda among Germans in foreign countries (Tr. 389–394). The Alliance was designed to attract persons who were sympathetic but did not wish openly to be known as Bund members (Fdg. 37, R. 32). The first

[8] Petitioner knew of the provisions of the constitution for he was appointed to check the articles of incorporation, and a copy was found among his papers (Tr. 86, 161).

president of the organization, a witness for the Government, was asked by petitioner on cross examination (Tr. 558):

> Q. Is it not a fact that as chairman of the German American Citizens Alliance you strongly stated whenever you presided that there was no connection whatsoever between the Citizens Alliance and the Bund?
>
> A. Yes, we let the people believe that, Mr. Knauer.

* * * * *

Subsequently, the district judge asked (Tr. 565–566):

> Q. You said in answer to the first question on cross-examination that the Alliance desired to give the impression, as I understood it, that they had nothing to do with the Bund. Just what did you mean by that? Did the Alliance members really know that there were Bund members that were members of the Alliance?
>
> A. Well, the German American Citizens Alliance was an organization formed for the purpose to bring into their ranks and their midst a number of people who probably didn't and couldn't join up with the Bund because it was called pro-Nazi. Now, we were an organization, an in-between, and we wanted to get these people into our organization. That was the purpose of it, one of the purposes of our organization.

On re-cross examination by petitioner (Tr. 567):

Q. Then you mean to state that you misled each and every person of the Citizens Alliance by the statements you made today on the witness stand?

* * * * *

A. Absolutely not. You all knew it, and you knew it.

Petitioner was formally accepted as an individual member of the Alliance on February 22, 1937, 55 days prior to his naturalization, and was immediately made a member of the executive committee (Tr. 82). He volunteered to collect articles that attacked the Alliance, German-Americans, and Germany (Tr. 82; Fdg. 38, R. 32). On April 12, 1937, the day before he was admitted to citizenship, he was elected master of ceremonies for a German day celebration to be held on June 5 (Tr. 87). On May 3, it was announced that the German Consul would present to the Alliance the very swastika flag which had been torn down at the Federation celebration the year before (Tr. 88). The presentation took place and the Alliance sent a letter of thanks to the Consul (Tr. 110–111; Fdg. 43, R. 35–36). A few months after his naturalization, petitioner proposed that the Alliance sponsor a solstice ceremony at which a wooden swastika was to be burned as a symbol of the unity of German people everywhere (Tr. 93–94, 553–554; Fdg. 38, R. 32–33).

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Petitioner became a dominant member of the Alliance (Fdg. 38, R. 32–33). As its spokesman in the years from 1937 to 1941, he wrote many letters and telegrams in which he vigorously denounced persons who criticized the Bund or the German Government (Tr. 101, 105, 108, 113, 114, 117–118, 167–169, 171–172, 175, 179–181, 185–191, 198–203, 210–211, 219–220, 259–262, 275–276, 278, 285, 293; Fdg. 39, R. 33). Many of these letters of protest were written in the name of the Alliance without prior approval by the organization (Tr. 293, 295, 555; Fdg. 39, R. 33). Although the Alliance never represented more than approximately 250 persons (Tr. 537–538), petitioner often purported to speak in the name of the entire German-American element. (See *e. g.*, Tr. 169, 200, 242, 261; Fdg. 53, R. 39.) In March 1938, petitioner was elected vice-president of the Alliance, and thereafter he presided at most of its meetings (Tr. 113–119, 127–139; see Tr. 652; Fdg. 38, R. 32–33).[9] In 1938, when a reporter asked the Alliance president about an Alliance celebration, he was told "I have nothing to do with the celebration in October. You must call Mr. Knauer" (Tr. 221).

Petitioner, usually in the name of the Alliance, vigorously defended the Nazi cause. In speeches in 1937 and thereafter he stressed the

[9] Froboese had suggested to the president of the Alliance that he resign in favor of petitioner (Tr. 556).

unity of the German *Volkstum*, stating that "with the rise and fall of the German nation we rise and fall" (Tr. 552–553; Fdg. 51, R. 38). In August 1937, he criticized a minister who declared that the German Government was hostile to Christianity (Tr. 171–172; Fdg. 55, R. 40). That same month, the Alliance refused to participate in an affair sponsored by an organization which would not fly the swastika flag (Tr. 102). Petitioner arranged for a public showing of films distributed by U. F. A., part of the official German propaganda organization (Tr. 112, 125–126, 241–242, 305–306, 395, 512, 516, 684). In April 1939, he made a prefatory speech at an Alliance-sponsored evening at which films were shown glorifying the German Army, Horst Wessel and Hitler (Tr. 226, 514–516). In 1940 he criticized the Mayor of Milwaukee who stated that Poland would some day "slay the giant" and wrote the mayor that he had been misinformed as to the terror which the Polish Government had practiced against the German minority in Poland (Tr. 260–262). In 1941 he condemned the Governor of Wisconsin for making disparaging remarks about the country of his origin and thus injuring the "great German nation" (Tr. 282; Fdg. 55, R. 40–41). In March 1941, he protested against the return of escaped German prisoners to Canada (Tr. 284–285). After World War II started, petitioner and the Alliance helped the

Kyffhaeuser Aid Society collect money for German prisoners of war (Tr. 137–138, 315–320). In 1941, when the Wisconsin Federation of German-American Societies pledged itself to maintain the democratic form of government and fight totalitarianism, petitioner issued "an appeal to German-Americans" in which he stated that this declaration constituted "open warfare against the present German Government" and was a plan "for the purpose of creating discord among the German people and inducing their own relatives living in Germany to revolt against the present German Government" (Tr. 290–291).

The Alliance and the Bund worked closely together (Fdg. 43, R. 35). The Bund camp was made available to Alliance members (Tr. 86–87), and Alliance festivals were held at the camp (Tr. 94, 107, 135, 136; Fdg. 43, R. 35–36). In June 1937, the Alliance participated in funeral services for an O. D. man (Tr. 96).[10] On August 2, 1937, the Alliance decided to support the German-day celebration of the Kenosha branch of the Bund (Tr. 97–98) and subsequently sent a letter of protest when the use of a public park was denied the group (Tr. 101; Fdg. 39, R. 33). It also supported various other Bund programs (Tr. 104, 105, 106, 127, 128). When Bund celebrations conflicted with Alliance programs, the latter were

[10] The O. D. (Ordnungs Dienst) was the uniformed guard of the Bund (Con. Tr. 107, 410–411; Fdg. 6, R. 22).

postponed (Tr. 104; Fdg. 43, R. 35–36). The Alliance supported the Youth Group of the Bund (Tr. 122, 133) and on the other hand, the Youth Group held a benefit performance for the Alliance (Tr. 123–124, 550; Fdg. 43, R. 35–36). The Bund supplied O. D. men for protection when the Alliance displayed German films in 1939 (Tr. 514–516, 641; Fdg. 43, R. 35–36). In March 1938, at petitioner's suggestion, the Alliance agreed to support Froboese, the Bund leader, by retaining an attorney on his behalf in an action against him (Tr. 109, 112). In 1940, the Youth Group of the Bund was admitted into the Alliance at the request of Froboese who thought that more members would be secured if the Youth Group were less openly associated with the Bund (Tr. 134, 542–543; Fdg. 45, R. 36–37). In the spring of 1938, Froboese reported to Gissibl, leader of the Chicago unit of the Bund, that he was in close cooperation with the Alliance in Milwaukee (Con. Tr. 208).

As spokesman for the Alliance, petitioner constantly defended the Bund. In 1938 when there was an attempt to deny the Bund the use of the Milwaukee Auditorium, the Alliance rose to the defense of the Bund (Ex. PK 36; Tr. 180–181; Fdg. 39, R. 33). In March of that year, petitioner wrote a letter to Judge Neelen criticizing him for freeing disturbers at a Bund meeting (Tr. 108; Ex. PK 43, 60; Tr. 185–188; Fdg. 39, R.

33). In April 1938, when the Turnverein criticized the Bund for spreading doctrines of racial hatred, intolerance and destruction of civil liberties (Tr. 206–207), petitioner, in the name of the Alliance, attacked that statement as "a declaration of war directed not only against the Bund as such, but against all Americans who are loyal to the country of their adoption but show admiratio and respect to their native country" (Tr. 200–203; Fdg. 40, R. 33–34). In December 1939, when Fritz Kuhn, national leader of the Bund, was sentenced for embezzlement, petitioner sent a letter to the presiding judge congratulating him for "having become nationally famous as part of a Jewish conspiracy to crucify Kuhn on stolen evidence" (Tr. 245–246; Fdg. 40, R. 33–34). In 1940, the Alliance defended the owner of the Highland Cafe, where Bund and Alliance meetings were customarily held, and paid his attorney's fees for proceedings to resist revocation of his license (Tr. 267, 270–277; Fdg. 40, R. 33–35).

Petitioner subscribed to the official Bund newspaper, the *Weckruf* (Tr. 352, 359, 364), and received *Facts in Review*, a propaganda magazine issued by the German Library of Information which was indorsed by the Bund (Ex. PK 145, Tr. 257–258; Fdg. 48, R. 38). He held shares in the Grafton Settlement League, the holding company for the Bund camp opened in 1939 (Tr. 381), and owned a cottage at that camp (Tr. 361; Fdg.

42, R. 35). He used Bund slogans at the beginning and close of all his speeches, and at other times (Tr. 235, 237, 242, 347, 512, 548, 640, 679, 684, 712–714, 728–729; Fdg. 42, R. 35). At a Concord Day celebration on October 8, 1939, petitioner remained seated while one verse of the National Anthem was sung but arose and stood in salute when, at his request, *Deutschland Über Alles* was sung (Tr. 639–641).

From 1938 on, petitioner was shown to be high in Bund circles. Mrs. Merton, who acted as secretary to Bund leader Froboese from March 1938, testified that, during the period she worked for Froboese, he and petitioner cooperated closely on Bund matters (Tr. 23–27). Froboese consulted petitioner about articles in the Bund's newspaper, the *Weckruf*, about speeches to be given by Froboese, and about resolutions to be offered at the 1938 Bund Convention calling for a white-Gentile-ruled America (Tr. 27–31; Fdgs. 41, 44, R. 35, 36). A member of the Bund was told by Froboese not to send out any letters "unless Paul [petitioner] or I O. K. it" (Tr. 41). When Froboese left to attend the 1938 Bund convention in New York, he told his secretary to consult petitioner if she had any questions about her work (Tr. 30; Fdg. 41, R. 35). In August 1938, when Froboese was called to the United States Attorney's office for investigation, he immediately telephoned petitioner, and subsequently told him of

the precautions he had taken to send correspondence and documents to German consular officials and to Germany (Tr. 45–48). Letters signed jointly by Froboese and petitioner were sent to Hitler and to Herr Bohle of the Auslands-Institut (Tr. 48–51, 54, 58; Fdg. 54, R. 39). Birthday greetings sent to Hitler by Froboese and petitioner closed with the phrase "In blind obedience I follow you" (Tr. 49–51; Fdg. 56, R. 41). In December 1938, together with Froboese, petitioner made threats against the manager of a radio station which cancelled a contract for a German Radio Hour in which the Horst Wessel song had previously been sung (Tr. 570–576, 590–595; Fdg. 53, R. 39). Petitioner attended closed meetings of the Bund leaders at the Highland Cafe and acted as a virtual legal adviser to them (Tr. 676–677, 678–680, 707–709, 722, 729, 730). In May 1939, at a large dinner of the Bund, petitioner sat with the national leaders (Tr. 676–677). A photograph taken at the dedication of the new Bund camp in May 1939, shows petitioner among a group of prominent Bund leaders with arm upraised in salute (Exs. PK 188–190; Tr. 346–348; see Con. Tr. 459, 462–463). A news photographer who wished to take photographs at the Bund camp in May 1939, was told to see either Froboese or petitioner (Con. Tr. 876, 879). In 1939, petitioner aided Buerk, subsequently indicted for failure to register as an alien agent (Tr. 320–

321), in recruiting skilled workers for Germany to return to work in industries there (Tr. 677–678, 715–717, 725–728; Fdgs. 41, 54, R. 35, 39–40).

In the early part of May 1938, Froboese and petitioner called various persons together for the organization of an American Protective League (Tr. 33–34). About 60 persons attended, and were requested to sign applications for membership (Tr. 35). Only 20 signed until the press was excluded and it was announced that the lists would not be public and would be known only to the petitioner, Froboese and one other. Thereupon 15 more signatures were obtained. (Tr. 36.) Bund and other anti-Semitic literature was offered for sale or distributed (Tr. 37). Petitioner was elected one of the directors; a constitution and by-laws, in the preparation of which petitioner had previously collaborated, were adopted (Tr. 38). Afterward the program of the organization was amended by Froboese and petitioner to include a purpose to exclude Jews from the University of Wisconsin and to confine Jews to residence in one city in each state. Copies of the amended constitution and by-laws were mailed by petitioner and Froboese to Hitler. (Tr. 52–53; Fdg. 54, R. 39.)

In March 1940, petitioner and Froboese tried to organize the Cooperative Organization of Americans of German Descent, commonly known as the Unity Front (Tr. 134, 248, 654–656). At the first

meeting of the proposed organization Froboese made a speech in which he said "we do not have to have the support of public opinion, American opinion. Give me my Germans and I will do the job" (Tr. 657). Petitioner stated that he did not have to add to the remarks of Froboese, and that the Alliance was ready to join (Tr. 658). The proposed Unity Front never materialized as an organization (Tr. 659) and was characterized by the Federation of German American Societies as a "pro-Nazi trick" (Tr. 249; Fdg. 46, R. 37).

In 1938 petitioner told Mrs. Merton that the Bund represented the "Fuehrer's grip on American Democracy" (Tr. 62–63; Fdg. 40, R. 33–34). He cautioned her never to reveal that his organization and the Bund were linked (Tr. 68–69). When questioned as to how he reconciled his sentiments with his American citizenship, he stated that citizenship was "a good thing to hide behind" (Tr. 63; Fdg. 58, R. 41).

The detailed findings of the district judge are summed up in his last two findings as follows (R. 41–42):

> 60. The attachment of the defendant Knauer in the year 1931 to the aims and objects of Hitler's National Socialist movement, his allegiance and attachment to the Third Reich as manifested by his statements and his frequent use of the Nazi salute in public, his devotion to and promo-

tion of the display of the swastika flag and ceremonies using it in symbolic pledge of fidelity to the Reich, his fierce concern over the good name and honor of the German race, his bitter and acrimonious denunciation of everything which interfered with or stood in the way of the fortunes of the German Reich, his belief in and advocacy of the German racial concept of duty and obligation of all Germans to the fatherland regardless of citizenship, his belief in an attachment to the principles and concepts of National Socialism, his espousal of the aims and objects of the German-American Bund and his active participation therein for the promotion of its aims and objects, his promotion and domination of the German-American Citizens Alliance to further the aims and objects of the Bund, his uninterrupted effort by word and deed to politically activate our German-American people in the interests of the German Reich, his persistent efforts among German-Americans, by means of charitable programs, speeches and movie films, to revive in them a feeling of fidelity and loyalty to the German Reich, the assistance he rendered to the consular representatives of the Reich in the attainment of matters advancing German interests, his fervent devotion and blind attachment to the Fuehrer at a time when the German Reich was hostile to the United States, his lack of affection for or devotion to the United States, his cynical evaluation

of his own American citizenship, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant at the time he filed his petition for naturalization did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, and at the time of his naturalization and at all times thereafter the defendant did not in fact renounce and abjure all allegiance and fidelity to the German Reich, but intended to retain and did retain allegiance and fidelity to the German government.

61. Defendant's belief in and adherence to the concepts of National Socialism as practiced by the Nazi Party in Germany and the German-American Bund in the United States, his activities in promoting the establishment of these concepts in the United States, his opposition to the constitutional principle of political and racial equality of all persons under law regardless of race and color, as evidenced by his campaign of race defilement particularly against the Jews, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant Knauer at the time of his filing his petition for naturalization, at the time of his naturalization, and at all times thereafter was not in fact attached to the principles of the Constitution of the United States and did not intend to support the same.

The district judge accordingly concluded that petitioner's certificate of naturalization was "fraudulently and therefore illegally procured" (R. 43). On appeal, the judgment of the district court cancelling petitioner's certificate of naturalization (R. 44) was affirmed. Judge Minton, speaking for a unanimous court, said (R. 94):

> Notwithstanding all of his work and activities on behalf of the Bund, the Alliance, and the Nazi party of Adolf Hitler and Germany in general, the record reveals no single act of loyalty to the United States on the defendant's part. The evidence is too clear that his heart was not in America except as he could use America to further the purposes of the Nazis in Germany. The trial court in his findings pointed out more in detail than we have the various activities of the defendant in the interest of Germany. We find all of the trial court's findings clearly, substantially, and unequivocally supported by the record. How any fair minded, conscientious judge could have heard and considered the evidence in this record and reached any other conclusion than Judge Duffy reached is beyond us to understand.
>
> This case in all its aspects has no resemblance to the case of *Baumgartner* v. *United States,* [322 U. S. 665]. In that case the defendant had given only lip service to his belief in the Nazi theory that all things

German were superior. He was not shown to be, as this defendant clearly was, an ardent Nazi and obedient follower of Adolf Hitler, and a tireless worker in "his master's vineyard."

SUMMARY OF ARGUMENT

I

The evidence in this case establishes beyond a troubling doubt that petitioner committed conscious and deliberate fraud in 1937 when he took an oath to renounce fealty to the German Reich and to bear true faith and allegiance to the United States. An oath of allegiance looks to the future. The essence of the complaint against petitioner was that he made a promise to the United States intending at the time not to carry it out. On that issue conduct immediately following the making of the promise is at least as probative, if not more so, than prior conduct. Consequently, in determining the state of petitioner's mind when he took the oath, the courts below properly considered evidence of petitioner's statements and conduct both prior to and immediately subsequent to naturalization. Congress itself recognized the propriety of considering conduct subsequent to naturalization when it provided that permanent residence outside the United States within five years after naturalization should be *prima facie* evidence of fraud in the representation of intention to reside in this country, a pre-

sumption whose validity was upheld by this Court. *Luria* v. *United States*, 231 U. S. 9.

Petitioner's whole course of action, prior to, at the time of, and immediately subsequent to naturalization establishes that he never intended to and never did renounce allegiance to the Reich. His expressed pro-Nazi sympathies, his enrollment of his daughter in the Youth Movement of the Bund, his attendance at Bund meetings, his support of the Bund program of seeking recognition of the swastika flag by the Federation of German-American Societies, all mark him with the Nazi stamp prior to his naturalization. He was an educated man, who fully understood the principles of German National Socialism, and who was fully aware of their utter incompatibility with the principles of American democracy. Shortly before naturalization, while his petition was pending, he became a leading member of the German-American Citizens Alliance, a Nazi front organization which was designed to entice Americans of German descent into the Nazi cause by indirection. Petitioner continued these organizational activities immediately after his naturalization and worked closely with the leader of the local unit of the Bund. He became a leading although undercover member of the Bund, directing its activities and advising on its policies. He was thus shown knowingly to have embraced Nazi ideology and to have sought actively to further it by organizing

the German-American group in its support. Both before and after naturalization he worked in close association with German consular representatives in this country. His whole course of conduct bespeaks not only a knowing acceptance of the doctrine of the overriding loyalty of German blood regardless of citizenship which was a fundamental and integral part of National Socialist ideology, but also a cunning and calculated attempt to further that philosophy by organized activity. At the same time, the record is utterly bare of a single statement on his part evidencing any concern for the United States as such. The evidence justifies and indeed compels the conclusion that petitioner consciously used his American citizenship, as he himself admitted, as "a good thing to hide behind", and establishes that his oath of allegiance was perjuriously false. This case is strong in every aspect in which *Baumgartner* v. *United States*, 322 U. S. 665, was weak.

II

Since transfer of allegiance is the very essence of naturalization, fraud in the oath of allegiance is a proper ground for cancellation of a certificate of naturalization. The judgment of naturalization cannot be *res judicata* on this issue, since it is not and cannot be a matter litigated in the proceeding. The oath is taken only after an applicant has been found to have met the other

statutory requirements, and at that time no further evidence is heard. The lack of a *bona fide* intention to transfer allegiance wholly and unequivocally renders the entire naturalization proceeding a fraudulent imposition on the court and on the United States.

Courts of equity have always had power to devitalize judgments founded on such basic fraud. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238. The power to devitalize judgments of naturalization founded on fraud has been specifically conferred by statute. The legislative history of the statutory provision makes it clear that Congress intended to reach any case where citizenship was granted to a person not entitled thereto, including a case where the judgment of naturalization was tainted with intrinsic fraud. There is no constitutional distinction between extrinsic and intrinsic fraud. Since unquestionably a person who did not in good faith intend to renounce fealty to his former sovereign and give whole-hearted allegiance to the United States would not have been eligible for citizenship, proof of such lack of good faith is a proper ground for cancellation of his certificate. This Court has so held as to fraud in the representation of intention to reside permanently in the United States after naturalization. *Luria* v. *United States*, 231 U. S. 9. Since allegiance is certainly as important as

permanent residence, that decision is controlling on the present issue.

Petitioner's other arguments as to *res judicata*, estoppel, and lack of power to cancel certificates of naturalization fraudulently or illegally procured, have all been made in and rejected by this Court before, not only when naturalization was an *ex parte* proceeding, but also after the United States had obtained a right to appear in the original proceeding and after that proceeding had been authoritatively determined to be appealable. Petitioner's basic contention is, in substance, that fraud once successfully perpetrated creates a conclusive estoppel against the defrauded party.

III

Apart from fraud in the oath of allegiance, cancellation of petitioner's certificate of naturalization was proper on the additional ground that, on clear and convincing evidence, it was shown beyond a troubling doubt that petitioner was never attached to the principles of the Constitution of the United States, and that his representation to the contrary was consciously false. The present record shows that he was attached to the principles of National Socialism and of the German-American Bund—to the leadership principle, to totalitarianism, to the principle of the racial unity of all Germans and their superiority over all other races. These are principles funda-

mentally antagonistic to those of our Constitution.

The requirement that an alien, in order to be eligible for citizenship, must be attached to the principles of the Constitution of the United States, dates from 1795. Recently some of the lower federal courts, in supposed reliance on *Schneiderman* v. *United States*, 320 U. S. 118, have in effect eliminated that requirement, and have held that the applicant is sufficiently attached if he is merely law-abiding. But that analogizes the applicant for citizenship to the alien who simply sojourns here temporarily; the latter is also required to be law-abiding, and owes a temporary allegiance to the United States so substantial that for breach thereof he may be guilty of treason.

The debates in the 3d Congress, where the requirement of attachment was first adopted, show that more was demanded of an alien seeking American citizenship than a mere promise to live peacefully in the United States while reserving private judgment that some other form of government was preferable. And the history of the times confirms the fact that those who introduced the phrase, "attached to the principles of the Constitution of the United States", regarded it as having more affirmative content than an attachment simply to free speech and the process of orderly amendment. They had won a long war for independence and erected a new form of

government; their "principles" had a wider scope than simply peaceful change.

We believe that the basic principles of the Constitution are (a) a republican form of government; (b) federalism; (c) a bill of rights for protection of the individual; and (d) an amending process for effecting changes in the organization of the government. Testing petitioner's views by that yardstick, it is clear that his attachment to the principles of leadership, of totalitarianism, and of racial unity and superiority shows that he espoused theories fundamentally at variance with those of the Constitution.

There is no need here to consider whether the test is subjective or objective, for the evidence shows that petitioner did not behave as a man attached to the principles of the Constitution. He could not meet even the test of behavior. Nor are we required to consider, in view of the 1929 amendment to the naturalization laws, whether it was sufficient for petitioner to satisfy the naturalization judge that his behavior met the required standard; when petitioner was naturalized, the statute required actual behavior as a man attached, not simply satisfying the court as to his behavior.

Petitioner's representation that he was attached to the principles of the Constitution of the United States was false, and consequently cancellation of the certificate of naturalization obtained on the

strength of that representation was proper. Attachment is the most important requirement of naturalization next to allegiance, for even a mere alien sojourner is required to bear a temporary allegiance.

IV

The Constitution and laws of the United States discriminate in favor of the person who acquires his American citizenship by birth over the person who seeks to acquire American citizenship by naturalization; this is so as to racial categories, ability to speak English, and attachment to the principles of the Constitution. Asiatics born in the United States are American citizens, but Asiatics born elsewhere are ineligible for citizenship and where they have been naturalized their certificates of naturalization are subject to cancellation.

Even an alien properly naturalized does not stand on a basis of equality with a native-born citizen in respect of eligibility to the Presidency or to membership in Congress, or in respect of freedom to reside permanently outside the United States. The naturalized citizen is subject to expatriation if he resides permanently abroad, under treaty and statutory provisions whose constitutionality has never been questioned. *Perkins* v. *Elg*, 307 U. S. 325, 329; *Luria* v. *United States*, 231 U. S. 9. The true basis for cancelling the naturalized expatriate's citizenship is that he re-

ceived it on condition that he would reside permanently in the United States.

Similarly, Congress has imposed conditions of belief as a prerequisite to entry into the country, to remaining in the country, and to admission into citizenship. Polygamists, anarchists, and persons believing in the forcible overthrow of government are excluded from the United States. The latter two groups (and polygamists prior to 1940) were excluded from citizenship. In like manner, a professed monarchist, being one not attached to the principles of our Constitution, is ineligible for citizenship.

It is essential to distinguish, in this connection, between the constitutional freedom of expression, which is limited only by the clear and present danger test, and the right of Congress to limit the acquisition of citizenship to those whose beliefs are such that they can unhesitatingly join in that common understanding which is a prerequisite to the successful functioning of a democracy. An alien monarchist or an alien fascist is not being denied freedom of speech because Congress insists that he be a convinced republican as a condition to obtaining American citizenship, or because the native-born citizen is not required to prove attachment to the principles of the Constitution as a condition to retaining American citizenship.

Consequently when the conduct of a naturalized citizen subsequent to his naturalization is made

the subject of judicial examination, he is not being put into a strait-jacket; it is simply that inquiry is made whether his citizenship was honestly acquired. This is equally the case whether the conduct subsequent to naturalization involves taking up permanent residence abroad, or systematic agitation short of violence in favor of monarchical government unfettered by the restraints of a bill of rights, or, where citizenship has been conferred because of military service, whether the military service after naturalization has terminated with a dishonorable discharge. In such cases, Congress and the courts do not deny the naturalized citizen either freedom of speech or freedom of movement; but they do deny him the fruits of his fraud or misconduct.

It does not follow that a decree of naturalization in such instances is neither citizenship nor adjudication, any more than it could be contended that the decree holding a patent valid and infringed which this Court set aside for fraud in *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, was neither a patent for invention nor an adjudication of its validity. The public interest is not harmed as much by an outstanding patent fraudulently obtained as by permitting a person opposed to the principles of the Constitution to continue to hide behind his fraudulently obtained citizenship. There is no constitutional difference between setting aside a patent for invention for

extrinsic fraud and setting aside a certificate of naturalization for intrinsic fraud; there is no constitutional compulsion requiring this Court to place a premium on petitioner's up-to-now successfully perpetrated fraud.

V

Expressions in judicial opinions as to freedom for the thought that we hate and the test of truth being the power of the thought to win acceptance in the competition of the market must not be torn from their context and erected into immutable principles. The Founders saw to it that there should be no freedom for one particular hated thought, even if it should triumph in the free competition of ideas; they provided for the guarantee of a republican form of government. The debates in the Convention and the *Federalist* both show that no state was to be allowed to have a monarchy, or any other anti-republican form of government, even if one was desired and was attained through peaceful processes.

Isolated expressions in the writings of Thomas Jefferson are not safe guides on these topics, for a number of reasons; taken literally, they contradict the intentions of the Framers and indicate that it was wrong to preserve the Union by force.

While our traditions and practices indicate that in a free republic there must be the widest scope for free expression, there is nothing in the Con-

stitution which requires "freedom for the thought that we hate" to be erected into such an absolute that the only other constitutional guarantee remaining is the Constitution's guarantee of its own self-destruction.

The present record shows that Hitler after 1923 decided to destroy German democracy by using its processes, and that in Germany the effect of "freedom for the thought that we hate" and of opening up the marketplaces of ideas to "the monstrous and debauching power of the organized lie" was the death-warrant of the German Republic.

There is nothing in the Constitution of the United States that requires us to follow the German example, or that requires us to grant citizenship to the enemies of freedom, or that immunizes fraud on the part of one who took advantage of American freedom in order better to be able to destroy it.

ARGUMENT

I

THE EVIDENCE ESTABLISHES BEYOND A TROUBLING DOUBT THAT IN 1937, WHEN PETITIONER RENOUNCED ALLEGIANCE TO THE GERMAN REICH AND TOOK AN OATH OF ALLEGIANCE TO THE UNITED STATES, HE COMMITTED CONSCIOUS AND DELIBERATE FRAUD

We submit that the evidence in this case establishes beyond a troubling doubt that, in 1936, when

petitioner swore in his petition for naturalization that he intended absolutely and forever to renounce all fealty to the German Reich, and in 1937, at the time of his naturalization, when he took an oath of unqualified allegiance to the United States, he committed conscious and deliberate fraud. Petitioner's whole course of conduct prior to, at the time of, and immediately subsequent to naturalization establishes that he never intended to and never did renounce allegiance to the Hitler Reich and that, if he gave allegiance to the United States at all, it was with the reservation that such allegiance would not conflict with, and thus would be secondary to, his paramount loyalty to Germany.

1. In April 1937, when petitioner was naturalized, Hitler had been in power four years. The blood purge of 1934, the program of military rearmament instituted in 1935, the occupation of the Rhineland in 1936 in violation of solemn treaty provisions, had already occurred. The antidemocratic character of the Nazi Government, its racial policies, its militarism, its emphasis on the national unity of all Germans regardless of their citizenship, were matters of common knowledge, the constant subject of comment in the American press. Petitioner had been to Germany in 1934 during the time of the purge. While there, he had been in touch with German officials

and had been offered a government post. He also admittedly had read Mein Kampf. After this 1934 visit he was shown to have been actively interested in German internal affairs and to have opposed any criticism of the then German Government from any source (see *supra*, p. 6). There can thus be no doubt that petitioner, an educated and articulate man, was well aware of the basic concepts of Nazi philosophy, including the principles of totalitarianism, racial superiority and German unity. Compare Fdg. 57, R. 41; Fdgs. 11, 12, 14, 16, R. 23–25.

It is equally evident that petitioner espoused these principles and actively sought to further them prior to this naturalization. His pro-Nazi sympathies were manifested in his strong reactions to any criticism of the Nazi regime and were well known to his friends, even to the witness who appeared for him in his naturalization proceedings (see *supra*, pp. 5–6, 8). Petitioner's aid to the German Winter Relief Fund during the winter of 1934–1935, after he had visited Germany and observed conditions there, is further evidence of his enlistment in the Nazi cause. His action in enrolling his ten-year old daughter in the Youth Movement of the Bund in 1936, particularly when considered in relation to the fact that he had observed and admired the Nazi Youth Movement in Germany, is strong evidence that he wished to

encourage the development of the Nazi ideology here.

Petitioner's persistent efforts to secure recognition of the swastika flag by the Federation of German American Societies must be evaluated in relation to the evidence that this represented a fixed policy of the German-American Bund, which, like its Nazi party counterpart in Germany, recognized from the start the value of symbols and ritual in developing loyalty to Germany.[11] In the United States, too, as this Court has had occasion to recognize, the flag has a transcendent

[11] Cf. Hitler, *Mein Kampf*, translated by Manheim (Houghton Mifflin, 1943), p. 492:

"The organization of our monitor troop clarified a very important question. Up till then the movement possessed no party insignia and no party flag. The absence of such symbols not only had momentary disadvantages, but was intolerable for the future. The disadvantages consisted above all in the fact that the party comrades lacked outward sign of their common bond, while it was unbearable for the future to dispense with a sign which possessed the character of a symbol of the movement and could as such be opposed to the International.

"What importance must be attributed to such a symbol from the psychological point of view I had even in my youth more than one occasion to recognize and also emotionally to understand. Then, after the War, I experienced a mass demonstration of the Marxists in front of the Royal Palace and the Lustgarten. A sea of red flags, red scarves, and red flowers gave to this demonstration, in which an estimated hundred and twenty thousand persons took part, an aspect that was gigantic from the purely external point of view. I myself could feel and understand how easily the man of the people succumbs to the suggestive magic of a spectacle so grandiose in effect."

symbolic value. *Halter* v. *Nebraska*, 205 U. S. 34, 43.[12] The acrimony which the flag question engendered in Milwaukee makes it clear that both sides to the controversy regarded it as involving fundamental issues of loyalty, and that petitioner, by his actions in this matter, showed clearly where his own loyalty lay.

Finally, just before naturalization, we find petitioner actively participating in the development of the German-American Citizens Alliance, a group which was clearly shown to have been known by petitioner to be a Nazi "front" organization, designed to gather into the Nazi camp by indirection German-Americans who for one reason or another felt it impolitic to be overtly connected with the already notorious Bund. Petitioner was not merely a member of the Al-

[12] "* * * the flag is the symbol of the Nation's power, the emblem of freedom in its truest, best sense * * * it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression."

Compare Holmes, *John Marshall* (1901), in *Collected Legal Papers* (1920) 266, 270–271:

"We live by symbols, and what shall be symbolized by any image of the sight depends upon the mind of him who sees it. * * * It is all a symbol, if you like, but so is the flag. The flag is but a bit of bunting to one who insists on prose. Yet, thanks to Marshall and to the men of his generation—and for this above all we celebrate him and them—its red is our lifeblood, its stars our world, its blue our heaven. It owns our land. At will it throws away our lives."

liance, but was on its executive committee, and was from the start the most active director of its policies.

On this evidence alone, all relating to petitioner's activities prior to naturalization, we think that the courts below could properly have found that petitioner consciously embraced Nazi ideology at the time he was naturalized, and that he was fully aware that such concepts were incompatible with the principles of the American Constitution and with allegiance to the United States.

2. The trial court was not, however, limited to a consideration of such evidence alone. Petitioner's contention (Br. 42–50) that the testimony in respect of his activities after naturalization was incompetent, is based on a misconception of the decisions of this court in *Schneiderman* v. *United States*, 320 U. S. 118, and *Baumgartner* v. *United States*, 322 U. S. 665. The *Schneiderman* case dealt with the question whether the defendant had, during the five-year period preceding naturalization, behaved as a person attached to the principles of the Constitution; this Court there said that petitioner's subsequent activities threw little light on the manner in which he had behaved during the period in question. Here the issue is not only petitioner's behavior prior to his naturalization, but the good faith of his oath of allegiance, of his promise in the future to act as a loyal American citizen. In essence the charge is that

petitioner made that promise with the present intention not to carry it out, a well-established species of fraud.

On such an issue there is no rule of law absolutely excluding all evidence of conduct after naturalization. If, for example, there were evidence showing that an alien, within a month before naturalization, wrote his wife that "in a war I belong in my homeland", "THERE is my place", "if I now become a citizen * * * by no means does it mean the break with my homeland and my nation", there could be no doubt whatever that the oath of allegiance had been fraudulently taken. On those precise facts, the Second Circuit held that the certificate of naturalization was fraudulently obtained and was properly cancelled by suit. *United States* v. *Siegel*, 152 F. 2d 614, petition for certiorari pending, No. 873, this Term. We submit that no different result could have been reached if the same letter had been written on the day after naturalization, or one month after naturalization, or even a year after naturalization. It is all a matter of proof, of the quantum of evidence necessary to establish beyond a present doubt that, when the alien took the oath of allegiance, he did not then intend in good faith to transfer his whole loyalty from the country of his origin to the country of his adoption. Obviously, in determining the mental state with which a promise looking to the future is made, conduct

immediately following the promise is at least as probative, if not actually more so, than conduct just prior to the promise.

Congress itself so recognized when it provided in Section 15 of the 1906 Act, 34 Stat. 596, 601, that permanent residence in a foreign country within five years subsequent to naturalization should be *prima facie* evidence of fraud in the representation of intention to become a permanent citizen. The reasonableness of that presumption was upheld by this Court in *Luria* v. *United States*, 231 U. S. 9. By the same reasoning, conduct immediately following naturalization is, logically and legally, evidence probative on the issue of the good faith with which the promise of future allegiance is given. An alien could be an active supporter of his country of origin up to the time of his naturalization, but if thereafter by speech and conduct he showed unquestioned loyalty to the United States, such subsequent conduct would be strong evidence that the transfer of the allegiance to the United States had been honestly made. On the other hand, an alien could designedly behave with circumspect discretion up to the time of his naturalization, but if shortly thereafter he committed espionage on behalf of his native country, it could not reasonably be argued that such action had no tendency to prove lack of good faith in taking the oath of allegiance. Where, as in the *Baumgartner* case, there is a long lapse of time

between the date of naturalization and the significant proof of later disloyalty, the probative value of subsequent conduct becomes weakened, particularly where, as in that case, an intervening event, such as Hitler's accession to power, might account for a change of heart. That, however, is not the situation here. In this case the evidence of subsequent conduct relates to activities immediately subsequent to the taking of the oath which were part of a continuous course of conduct begun prior to naturalization. As such, it had strong probative value on the issue of petitioner's good faith in renouncing for the future his loyalty to the Reich and in promising allegiance to the United States.

3. Petitioner's actions immediately after naturalization conclusively prove that he never intended to and never did renounce allegiance to Germany. A few months after his naturalization he was sponsoring a solstice ceremony designed to symbolize the unity of the German people everywhere, and was stressing in speeches the Nazi concept of the German *Volkstum*, of German racial unity (see *supra*, pp. 13, 14–15). His entire activity from 1937 on, as the dominant member of the German American Citizens Alliance, was focused in support of the Nazi Government and its American spokesmen; the German-American Bund. Since petitioner was designedly acting as a "front," his declarations were by and

large couched in terms of those "who are loyal to the country of their adoption but show admiration and respect to their native country" (*supra*, p. 18). But to hold that this evidences loyalty to the United States is to disregard substance for form. For example, the particular statement quoted above must be considered in the light of the fact that it was made in response to a criticism of racial hatred, intolerance and destruction of civil liberties. Similar statements by petitioner were all directed against any declaration recognizing the basic conflict between American ideas and Nazi ideology.

It is extremely significant, we believe, that petitioner's numerous public expressions were primarily directed, not at achieving equality of treatment as between native-born Americans and Americans of German birth, but at answering, discrediting, and ultimately stifling any and all criticism of the National Socialist regime in Germany. Nor were these merely casual opinions. The fact of the matter is that petitioner was acting on behalf of an organization which was deliberately seeking to entice all American citizens of German descent into support of the Nazi cause. It is only necessary to recall the history of Austria and Czechoslovakia in the years from 1937 to 1939 to recognize that peaceful infiltration and apparently innocent organizations were the methods of Nazi penetration, and it is certainly significant here that the Bund newspaper

reprinted with obvious pride an article from a Swiss journal which likened Fritz Kuhn, the leader of the German-American Bund, to Henlein, the notorious head of the Sudeten Germans, whose activities led to Munich and the dismemberment of Czechoslovakia.[13] The plan was organization first, and action later. It is not so much what petitioner said as what he was obviously trying to accomplish that shows his fraud upon the naturalization court. No one letter, no one public statement by petitioner on his own behalf or on behalf of the Alliance may in itself be conclusive evidence of his disloyalty, but the entire pattern of his actions and speeches in the years from 1937 to 1939 bespeaks an overriding loyalty to Hitler and Germany which is wholly incompatible with any renunciation of allegiance to that country in good faith in April 1937.

The course of conduct pursued by petitioner would have been both impossible and incomprehensible in a German who foresworg past political allegiance without reservation, retaining the cultural feelings imbedded in childhood and youth; but it fits without a single aspect of inconsistency the pattern of a German who, following his Fuehrer in blind obedience, finds American citizenship a good thing to hide behind. Petitioner's

[13] Page 130 of Pl. Ex. 17; Con. Tr. 233. The *Deutscher Weckruf und Beobachter* for August 31, 1939, prints a Swiss article headlined "Fritz Kuhn, the Henlein of America."

conduct was never that of an American citizen who retained a cultural and sentimental affection for the land of his birth; it was, however, at all times, that of a German, a loyal, devout, even fanatical National Socialist German, who regarded his certificate of naturalization as a convenient camouflage, behind the cover of which he could more easily pursue activities which would inure to the benefit of, and only of, his native Fatherland.

4. That petitioner was deliberately and consciously furthering the Nazi cause in the period immediately following his naturalization is, we think, conclusively established by the evidence of his relations with the German-American Bund. By March of 1938, within a year of his naturalization, petitioner was shown to have been a leading although under-cover member of the Bund, directing its activities, and advising on its policies. In that year he was shown to have been in active correspondence with officials of the German Government and to have kept them informed as to his activities, including the proposed organization of the German-American Protective League (see *supra*, pp. 19–21). The testimony of Mrs. Merton as to petitioner's close association with the mid-western *Gauleiter*, Froboese, is corroborated by the testimony of those who observed Bund meetings in the Highland Cafe, and the testimony of the managers of the radio station who were

threatened by petitioner and Froboese in December of that year.[14] It is confirmed as to the year

[14] In view of the importance of Mrs. Merton's testimony, and the efforts made by petitioner at the trial (Tr. 65–71, 739–756, 904–906, 939–1045), in the court below (see R. 94–95), and here (Pet. Br. 20), to impeach her testimony and to attack her credibility, we set out the detailed evidence corroborating her.

Mrs. Merton, who had acted as Froboese's secretary, testified at length as to petitioner's close connection with Froboese, and as to his disloyal attitude towards the United States (*supra*, pp. 19, 22). We have pointed out in the text the other testimony establishing petitioner's close relationship with Froboese in 1938 and 1939.

Petitioner asserted, when he took the stand, that he had never seen Mrs. Merton (Tr. 904–906), attempted to impeach her testimony by showing that there were some errors in German sentences she had written and typed in court at his dictation (Tr. 755–757, 996–1006), and offered the testimony of Mrs. Froboese that she had never seen Mrs. Merton (Tr. 989) and that she had never seen petitioner at Froboese's house (Tr. 990). Mrs. Merton's original testimony had been that Froboese had said that a wife should not know her husband's business (Tr. 763), and that in consequence she had see Mrs. Froboese only once (Tr. 71, 763).

In corroboration of Mrs. Merton, it was shown that Mrs. Froboese had told an F. B. I. investigator in January 1942 that a Miss Merton or Myrtle had been her husband's stenographer in the past (Tr. 1033, 1035). Inspector Schranz of the Milwaukee Police Department testified that in 1938 Mrs. Merton had informed him she was working as Froboese's secretary and had made reports regularly to the Police Department (Tr. 1028–1030). A police sergeant in the Inspector's office testified from notes that, in September 1938, he drove Mrs. Merton to the vicinity of Froboese's home and saw her enter the house (Tr. 1042–1044, 1045). Moreover, Judge Steinle, who was called by petitioner as a witness, testified that in 1938 Mrs. Merton had told him that she was investigating subversive activities on the part of

1939 by the casual remark of a photographer that, when he wished to take pictures, at the Bund camp, he was told to see either Froboese or petitioner (*supra*, p. 20). It is an inescapable inference that petitioner did not become a leading voice in Bund councils early in 1938 without proof of his loyalty to the Nazi cause at least in 1937, the year of his naturalization.

When, therefore, he defended the Bund, when he wrote on August 11, 1937, that "this organization is rendering a valuable service to the U. S. A." and that "the Bund is teaching respect for the American Constitution and flag" (Ex. PK

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people who were friendly to the Nazi cause (Tr. 944), and that her reputation for truth and veracity was very good (Tr. 946).

The trial judge subjected Mrs. Merton to a searching cross-examination (Tr. 758–766), and assisted petitioner in the latter's attempt to impeach her testimony. He allowed petitioner to call Mrs. Merton as his own witness for the purpose of subjecting her to further cross-examination (Tr. 739), arranged, after the close of the evidence in the case, to have Mrs. Froboese produced from the camp where she was interned (Tr. 939), and, at the additional hearing, allowed petitioner to produce other witnesses in addition to Mrs. Froboese in an attempt to discredit Mrs. Merton (Tr. 939, 943, 996, 1002, 1007, 1009, 1013, 1015, 1024).

The circumstance that, at the close of the whole case, the district judge's findings follow the testimony of Mrs. Merton (*e. g.*, Fdgs. 41, 54, 56, 58; R. 35, 39, 41), indicate clearly that after observing her demeanor and those of the other witnesses, and noting that petitioner's denials on other points also ran counter to the weight of the evidence (*infra*, p. 53), the district judge concluded that she was telling the truth. The circuit court of appeals came to the same conclusion, stating (R. 95) that "Mrs. Merton's testimony was wholly credible and corroborated in many respects."

23; Tr. 174, 175), when he attacked the judge who had sentenced Bund leader Fritz Kuhn to jail in 1939 (*supra*, p. 18), when, during the entire period from 1936 to 1940 he kept his daughter enrolled in the Youth Movement of the Bund (*supra*, p. 8), his acts were those of a man who was fully familiar with all of the tenets of that organization. Whether the part he thus played as a leading supporter of the Bund in Wisconsin involved actual enrolled and recorded Bund membership or whether he eschewed this final act, preferring as more effective his front activities in the name and behind the facade of the German American Citizens Alliance, is unimportant.[15] The significant fact is that those who were actively and openly furthering Nazi doctrines in this Country were well aware that, prior to 1938, petitioner had knowingly aligned himself with their cause, and that he was, as he himself had stated, a loyal follower of Adolf Hitler "in blind obedience."

5. Moreover, much of petitioner's conduct reflected by the present record without substantial contradiction involves activities that go far beyond even active, participating membership in an organization "for the systematic agitation of Nazi

[15] It is significant in this connection that the district judge concluded that (R. 27), "The fact that a person was a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant a judgment of cancellation of a decree of naturalization."

views." *Baumgartner* v. *United States*, 322 U. S. 665, 677. In a good many activities he worked directly with German consular representatives in this country.

We have shown above, *supra*, pp. 5–7, petitioner's pre-1937 connection with German consulates in connection with the distribution of Nazi propaganda films and the collection of money, ostensibly for German winter relief but actually to increase the Nazi Government's supply of foreign currency. The circumstance that petitioner was naturalized in 1937 made no difference to one who regarded citizenship as a good thing to hide behind, and in the years that followed he continued to act in close cooperation with German consulates in furtherance of the interests of Nazi Germany.

In 1938, he acted as go-between and representative of the Consul in the Beutler matter. Dr. Beutler was a refugee from Germany whose real property there had been sequestered by the Nazis. He desired to exchange it for real property in the United States, by way of salvaging some of its value, and ascertained that such transfers were to be effectuated through the German Consulate. Petitioner, as agent for the Consul, drafted the necessary letter, and charged a fee of $7 for his work. The transaction was not consummated, but petitioner kept the money (Tr. 693–705; Ex. PK 207–209).

In 1939 petitioner assisted one Buerk, together with a consular representative, in recruiting skilled labor for work in Germany. Though petitioner denied any such activity (Tr. 366), the evidence against him on this point was overwhelming (Tr. 677–678, 714–717, 724–728) and the district court found as a fact, as it was compelled by the weight of the testimony to do, that petitioner participated in this recruiting (Fdg. 54, R. 40). The finding itself summarizes the evidence with considerable particularity. Buerk was subsequently indicted for failure to register as a foreign agent, and while in confinement had the solace of a visit from petitioner (Tr. 321, 322, 732–733); in due course, Buerk was released without trial, apparently in exchange for an American held by the Nazis (Tr. 325, 734–736), and returned to Germany in 1941 with the German consular officials after the closing of the German consulates (Tr. 323, 734–736). Petitioner attended the farewell party given for Buerk (Tr. 324).

Other activities on petitioner's part emphasize that his true allegiance lay with Germany and not with the country whose citizenship he found it convenient to hide behind. His enthusiasm for the solstice ceremony, designed to symbolize the blood unity of Germans everywhere regardless of nationality (*supra*, p. 13), his correspondence with Herr Bohle of the German Auslands-Institut in

Stuttgart, an official Nazi organization whose entire activity involved fostering the same idea, his statement that "with the rise and the fall of the German nation we rise and fall" (*supra*, pp. 15, 20), his consistent defense of the Nazi regime in Germany against all attacks, particularly against attacks originating in German-American groups, and his expressed willingness to follow Adolf Hitler "in blind obedience", all emphasize that his allegiance remained with Germany, and that his oath purporting to foreswear that allegiance and thereafter to bear true faith and allegiance to the United States was, and was known by him to be, false and perjurious.

6. In evaluating petitioner's conduct, both prior and subsequent to naturalization, we think it essential to bear in mind that the aggressive German nationalism expounded by the Nazi ideology involved a concept of a racial citizenship, a fellowship of German blood which persisted despite outward changes in nationality (Con. Tr. 141, 145–146, 278, 355, 438–439, 450–451, 618–623). The Nazi doctrine of "Ein Volk, Ein Reich, Ein Fuehrer"—"One People, One Realm, One Leader"—necessarily required a paramount and overriding allegiance to the German nation as such which is irreconcilable with renunciation in good faith of allegiance to one's country of origin, and with whole-hearted and indivisible allegiance to the United States. In some instances, of course, there may well be a question whether a particular

applicant for citizenship is aware of that conflict at the time of naturalization. But where, as in the instant case, it is clear that the applicant has consciously, knowingly, and willingly embraced the Nazi doctrine of a transcendent blood loyalty among Germans regardless of their nationality—"Blood is Sacred" (Pl. Ex. 56, Con. Tr. 448)—and has sought, by every means within his power, to foster and implement it through personal and organizational activities, then the oath of allegiance to the United States is consciously false.

That conscious falsity has been established here, we submit, by clear, unequivocal, and convincing evidence. Here the evidence proves beyond possibility of troubling doubt that petitioner, before naturalization, knowingly espoused Nazi principles and doctrines, and sought by words and action to propagate and further them; and that, far from desisting after his naturalization in 1937, he became even more outspoken in his views and even more vigorous in his organized activities in behalf of Germany. Everything he did favored and furthered the cause of Germany; nothing he did favored or furthered the cause of the United States except possibly within a formula that linked the two. The long record in this case is utterly bare of a single act, of a single word, of the expression of a single thought, which evidences an undivided allegiance to the United States, or indeed any concern for the United States unlinked

or unrelated to the welfare of the German Reich. Petitioner's loyalty at all times burned steadfastly—for Germany.

Nor is there here any question of imputing the aims of an organization to some insignificant underling who may have joined under stimulus of loneliness or under the impetus of social pressure, without a full awareness of the full implications of his membership. We are not here imputing every sentence of a catch-all political platform to a lowly precinct worker, or to an individual voter. Petitioner dominated the Alliance; petitioner was a leading voice in Bund councils, however well that voice may have been concealed from outside listeners. The evidence establishes beyond any doubt that his was a shrewd and calculated plan to take advantage of American freedom of expression on behalf of the Alliance, and to conceal deliberately his close Bund affiliations in order to advance Bund objectives, and through them Nazi objectives, in the United States. Only when his enthusiasms prevailed at Alliance meetings, where he invariably gave the Nazi salute and used the greeting "Free America!" which the Bund had adopted in 1938, did he openly disclose his membership in as well as his community of interest with and his devotion to the Bund.

The evidence fully supports the finding by the district court (Fdg. 50, R. 38):

> I find as a fact that the defendant was a member of the Milwaukee unit of the Bund; that he was so considered by its officers and members; that most of his interests and activities were in behalf of the Bund; and that, though completely aware of its aims and purposes, he deliberately vigorously promoted the objects of the Bund.

More than that, the evidence establishes, what we have heretofore shown in considerable detail, that most of petitioner's activities were undertaken on behalf of Nazi Germany, and that, though fully aware of the aims and purposes of National Socialism and their utter incompatibility with devotion and allegiance to the United States, he vigorously worked to further the cause of Nazi Germany within the framework of American freedom. The premise underlying petitioner's attitude was articulated with disarming frankness by the Bundist Gissibl (Con. Tr. 198):

> * * * many of us didn't know the Constitution. We knew about the privileges we had under the Bill of Rights and the Constitution, and we surely made plenty use of these privileges, but we didn't know much of the Constitution itself.

We think that the whole evidence justifies the conclusion, not only that petitioner never re-

nounced allegiance to Germany, but that he artfully and intentionally used his American citizenship as "a good thing to hide behind." In the terms of the *Baumgartner* decision, 322 U. S. at page 672, the evidence here establishes not only the "objective falsity" of petitioner's oath of allegiance, but its "perjurious falsity" as well.

7. This case is strong in every aspect in which this Court found the *Baumgartner* case weak. When petitioner was naturalized in 1937, the German Government was that of Hitler, not as in the *Baumgartner* case, that of the Weimar Republic. Moreover, Hitler had been in power long enough for Nazi theories to have been translated into practice and for Nazi principles to have become well known. The evidence here does not consist solely of expressions of opinion long after the event, but of statements immediately prior to, contemporaneous with, and immediately following naturalization. Finally, petitioner did not confine his activities to expressions of opinion alone. He was shown to have been a leading member of both the Bund and the German-American Citizens Alliance, two organizations designedly organized "for the systematic agitation of Nazi views" (see 322 U. S. at page 677). Under these circumstances we submit that the district court and the circuit court of appeals properly considered all the evidence in the case, and were not

only fully justified in finding, but indeed were compelled to find, that such evidence was clear, unequivocal and convincing proof that petitioner committed fraud when he foreswore fealty to Germany and promised allegiance to the United States.[16]

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[16] Petitioner's brief suggests that petitioner was prejudiced because he insisted on acting as his own counsel at the trial (Pet. Br. 50–51). It should be noted, however, that petitioner had studied law in Germany and apparently had acted as legal adviser to the Milwaukee unit of the Bund (see *supra*, pp. 4, 20). His testimony at the trial shows him to be both shrewd and articulate (see Tr. 156–384), and his objections to questions, some of which were sustained by the trial judge, reveal a working knowledge of legal principles (*e. g.*, Tr. 384, 392, 395–396, 397, 398, 403, 484, 512, 523, 536, 546, 550, 589, 612, 655, 992).

Furthermore, the trial judge was very careful to protect petitioner's rights. As previously shown, *supra*, p. 50, note 14, he permitted petitioner to cross-examine Mrs. Merton after calling her as his own witness, and allowed petitioner to call additional witnesses after the case had been closed except for the testimony of Mrs. Froboese. In doing so, the trial judge specifically stated that he was granting petitioner greater leeway than he would have allowed a defendant represented by counsel (Tr. 739, 947, 1019–1020). The trial judge interposed and sustained an objection on petitioner's behalf (Tr. 809), advised petitioner about his own testimony (Tr. 902–905, 910–912), and informed him of the type of question which could be asked concerning Mrs. Merton's reputation for veracity (Tr. 1022–1023). The trial judge himself cross-examined Mrs. Merton at length (Tr. 758–766). It is thus clear that he not only accorded petitioner a trial of exemplary fairness, but, as he stated, granted petitioner special privileges which would not have been allowed a defendant represented by counsel (Tr. 826, 906, 907, 1019).

II

FRAUD IN THE OATH OF ALLEGIANCE IS A PROPER GROUND FOR CANCELLATION OF A CERTIFICATE OF NATURALIZATION

The essence of naturalization is the transfer of allegiance from the country of origin to the country of adoption. For more than 150 years, since the first naturalization act of 1790, an alien admitted to United States citizenship has been required to take a solemn oath in open court that he will support the Constitution of the United States, and since 1795 he has been required to swear that he absolutely renounces allegiance to every foreign power, and particularly the foreign power of which he was formerly a citizen. Act of March 26, 1790, c. 3, 1 Stat. 103; Act of January 29, 1795, c. 20, 1 Stat. 414; Act of April 14, 1802, c. 28, 2 Stat. 153, 154; R. S. 2165; Act of June 29, 1906, c. 3592, 34 Stat. 596, 598; Act of October 14, 1940, c. 876, 54 Stat. 1137, 1157 (8 U. S. C. 735). Unquestionably, if an applicant for citizenship stated that he recognized a paramount loyalty to his country of origin over and above his allegiance to the United States, he would not be eligible for citizenship. Petitioner's position (Br. 16–41) is that, even though an alien may have such a mental reservation which he does not disclose to the court, his certificate of naturalization is thereafter inviolable if he meets the other

statutory requirements and repeats the words of the oath in open court. He argues that the judgment of the naturalization court admitting an applicant to citizenship is a final judgment on his qualifications, including his loyalty, and that fraud in the representation of intention as to allegiance is "intrinsic fraud," litigated in the proceedings for naturalization, which cannot be examined in a subsequent suit.

If petitioner's position were sound, it would mean that for 150 years Congress has laid down as a requirement for citizenship a mumbo-jumbo ritual which has no meaning whatsoever; that, although allegiance is the foundation of citizenship, a representation of intention to be loyal has less significance than the representation of intention to reside in this country after naturalization (*Luria* v. *United States*, 231 U. S. 9); and that good faith in the transfer of allegiance is less important than prior residence in the United States (*Johannessen* v. *United States*, 225 U. S. 227), than the filing of a certificate of arrival (*United States* v. *Ness*, 245 U. S. 319), or than the place where a hearing was had (*United States* v. *Ginsberg*, 243 U. S. 472). The absurdity of such result in itself casts doubt on the arguments offered to support it. An analysis thereof, we submit, shows them to be unsound.

The assumption that the naturalization court, on evidence, makes a finding as to the genuineness

of petitioner's representation that he intends in good faith, for the future, to bear true faith and allegiance to the United States, is an erroneous one. It is unnecessary to consider at this point the extent to which the judgment of naturalization may constitute a final determination of issues of fact as to residence and past behavior, matters which under the statute must be substantiated by the testimony of two witnesses (Appendix, *infra,* p. 115). The oath of allegiance is clearly in a different category. It relates, not to the past, but to the future; not to behavior, but to mental state. Only after an alien has been found to have met the other statutory requirements does he take the oath to renounce his former sovereign and to give full faith and allegiance to the United States. An alien who intends to use citizenship as "a good thing to hide behind" may be careful to behave with discretion for the five-year period preceding naturalization, and thus may properly be found to be a person eligible for citizenship. He does not, however, become a citizen until he takes the oath in open court, and he is not properly a citizen unless he takes that oath in good faith without mental reservation.

No further evidence is heard at the time the oath is taken. There is thus no opportunity for the naturalization examiner or the judge to determine the good faith of the oath, its truth or its falsity. The oath is not the determination of an

issue of fact, but, as petitioner himself admits (Br. 41), is the final act by which an alien enters into his new status as a citizen. Thus, fraud in the oath of allegiance is not, like incidental perjured testimony at the trial, the type of "intrinsic fraud" which cannot be the basis for collateral attack upon the judgment. The doctrine of *United States* v. *Throckmorton*, 98 U. S. 61, upon which petitioner relies (Br. 19–23), is merely that the issue of fraud can become *res judicata* when it has been litigated and adjudicated in the judgment sought to be set aside. As petitioner himself states (Br. 22), fraud is intrinsic when the fraudulent matters were in issue and could have been or were adjudicated. As we have shown, fraud in the oath of allegiance is not a matter which has been or could be tried in the naturalization proceeding.

Furthermore, allegiance is not an incidental issue in naturalization; it is the essential operative element of the entire proceeding. The first act performed by an alien in applying for naturalization is to state in his declaration of intention that it is his bona fide intention to renounce prior loyalties and to become a citizen of the United States; the last act is the taking of the oath in open court. A naturalization proceeding instituted without bona fide intention to become a loyal citizen of the United States is not merely colored

by fraud, it is founded on fraud. The whole proceeding is an imposition upon the court and upon the United States as a nation.

The authority to cancel for such basic fraud is established. Petitioner likens the oath to the marriage vows (Br. 40), but he neglects to consider that one party's fraud in concealing his intention not to carry out his marital obligations is a well-recognized ground for annulment of a marriage. 2 Schouler, *Marriage, Divorce & Domestic Relations* (6th ed.) sec. 1142. Even without the authority of statute, courts of equity have power to devitalize a judgment founded on fraud, a power which this Court has but recently reaffirmed. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, 244–246.

We submit, therefore, that subtle distinctions and "witty diversities" between extrinsic and intrinsic fraud are thus of little relevance here. In any event, whatever may now be the effective difference between extrinsic fraud and intrinsic fraud in proceedings resting solely on judicial power, as to which see *Hazel-Atlas Co.* v. *Hartford Co., supra,* the basis for cancellation of fraudulently obtained certificates of naturalization is statutory, and is broad enough to reach intrinsic fraud.

The language of the statute (*infra,* pp. 113–114) is absolute and unequivocal. The legislative history of the 1906 Act, which first granted statutory

authority for cancellation of certificates of naturalization, shows that perjured testimony, generally considered as "intrinsic fraud," was one of the particular evils which Congress sought to reach. The report of the Committee on Immigration and Naturalization, to which was referred the bill which eventually became the 1906 Act, stated (H. Rep. 1789, 59th Cong., 1st sess., p. 2):

> With the great influx of foreigners who have in recent years come to our shores and who are yearly coming in increasing numbers, and who seek naturalization under our laws, a very loose, unsatisfactory, and careless method of naturalization has grown up, leading to the grossest character of frauds against American citizenship. The conditions that have been revealed by special investigations of the frauds committed against the naturalization laws render wholly unnecessary any argument upon the necessity at this time of fully exercising all the authority in naturalization matters conferred by the Constitution upon Congress.
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> * * * * *
>
> The worst and most glaring frauds have consisted in perjury, false impersonation, and the sale and use of false and counterfeit certificates of naturalization. * * *

The report of the Senate Committee on Immigration repeated this statement *in haec verba*. See S. Rep. 4373, 59th Cong., 1st sess., pp. 1-2. Representative Crumpacker, one of the sponsors of

the legislation, emphasized during the debates that the legislation authorized cancellation where the certificate of citizenship was procured by practicing a fraud on the court (40 Cong. Rec. 7040):

> If any alien shall impose upon the court by perjured testimony, or if a certificate has been issued in violation of law, the bill makes the certificate invalid and authorizes proceedings in any court of competent jurisdiction to cancel the certificate of citizenship * * *. A certificate tainted with fraud is in the sense of the law no certificate at all.

We think it is clear that Congress intended to provide a remedy which would reach all cases where persons who were not entitled to citizenship had received certificates of naturalization, and that it is unimportant whether the certificate was wrongfully obtained by mistake, by perjury, by extrinsic fraud, or by intrinsic fraud. Since, unquestionably, an alien who was unwilling to renounce allegiance to his country of origin and bear true faith and allegiance to the United States would not have been admitted to citizenship if such fact were known to the court at the time of his naturalization, his certificate may be cancelled on proof that he did in fact have such mental reservation. Even if, in the circumstances of the present case, fraud in taking the oath of allegiance can be said to amount to intrinsic fraud only, it is clear that the rule that equity will not set aside

judgments for such fraud is a canon of judicial discretion rather than of power. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, 244. That rule certainly does not limit the power of Congress to provide for the cancellation of a certificate of naturalization improperly issued. There is no constitutional distinction between intrinsic fraud and extrinsic fraud. As this Court stated in *Johannessen* v. *United States, supra,* 225 U. S. at p. 241:

> * * * An alien has no moral or constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would not have been issued.

In our view, the arguments advanced by petitioner are foreclosed by the decision of this Court in *Luria* v. *United States,* 231 U. S. 9. In that case, a certificate of naturalization was cancelled for fraud on the ground that petitioner had not in good faith intended to become a resident of the United States at the time he was naturalized, although at that time the statute did not require a declaration of intention to become a permanent resident. This Court held that naturalization implied a commitment in good faith to undertake the duties of citizenship; that, if it were shown that an applicant lacked good faith, his certificate of naturalization could be cancelled; and that the

presumption of the 1906 Act, by which permanent residence in a foreign country within five years after naturalization was to be deemed prima facie evidence of lack of intention to reside here, was applicable to a certificate issued before enactment of that statute. The Court said (231 U. S., at 22, 23–24):

> Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other. * * *
>
> These requirements plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the Government and himself, the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past.
>
> By the clearest implication those laws show that it was not intended that naturalization could be secured thereunder by an alien whose purpose was to escape the duties of his native allegiance without taking upon himself those of citizenship here,

> or by one whose purpose was to reside permanently in a foreign country and to use his naturalization as a shield against the imposition of duties there, while by his absence he was avoiding his duties here. Naturalization secured with such a purpose was wanting in one of its most essential elements—good faith on the part of the applicant. It involved a wrongful use of a beneficent law. * * *

It would thus seem to be settled that the mental state, the good faith, which underlies an application for naturalization, is a jurisdictional matter; that proof of lack of good faith may be based on conduct within a reasonable period subsequent to naturalization; and that, if lack of good faith is established, a certificate of naturalization may be cancelled. Since allegiance is certainly as important as an intention to reside here, lack of good faith in the representation as to future loyalty to the United States is fraud of a fundamental character, which when established is clearly a proper basis for cancellation of a certificate of naturalization.

For the rest, petitioner's arguments as to *res judicata,* estoppel, and lack of power in the courts to cancel have all been made in and rejected by this Court in the past. See appellants' arguments in *Johannessen* v. *United States,* 225 U. S. 227, 228–229, and in *Luria* v. *United States,* 231 U. S. 9, 11–14; see petitioner's argument in *Maney* v.

United States, 278 U. S. 17, 18–19. While, it is true, the certificates involved in the *Johannessen* and *Luria* cases had been issued in *ex parte* proceedings, this Court held in *United States* v. *Ness*, 245 U. S. 319, that the same result properly followed after the United States had been given a statutory right to appear in the original naturalization proceeding. Mr. Justice Brandeis, speaking for a unanimous Court, pointed out that Section 11 of the 1906 Act, providing for an appearance on behalf of the United States in the naturalization proceeding, and Section 15 of the same Act, authorizing cancellation for illegality and fraud, were designed to afford cumulative protection against fraudulent or illegal naturalization. Accordingly, in a suit under Section 15 to set aside a certificate granted without the prior filing of a certificate of arrival, the Court held that the United States was not estopped by the order of naturalization, although it had entered its appearance in the naturalization proceedings pursuant to Section 11 and had there unsuccessfully raised the same objection.

Nor can the *Ness* case be distinguished on the ground that the right of appeal in naturalization cases had not then been recognized. In the very decision which did for the first time authoritatively recognize such a right, Mr. Justice Brandeis, again speaking for a unanimous Court, reaffirmed the right of the United States to cancel for fraud

or illegality a certificate of naturalization previously granted. *Tutun* v. *United States*, 270 U. S. 568, 576, 578, 580.

What petitioner's argument therefore comes to is that, since the naturalization court was unable to discover that petitioner did not, when he foreswore allegiance to the German Reich and took the oath of allegiance to the United States, intend in good faith either to renounce his prior allegiance or to pledge an unconditional fealty to the country of his adoption, there is now no constitutional method by which the United States can strip him of the fruits of his fraud. Otherwise stated, the contention is that fraud, once it has been successfully perpetrated, forever estops the defrauded party.

III

THE EVIDENCE LIKEWISE ESTABLISHES BEYOND A TROUBLING DOUBT THAT PETITIONER'S REPRESENTATION AT THE TIME OF HIS NATURALIZATION THAT HE WAS ATTACHED TO THE PRINCIPLES OF THE CONSTITUTION OF THE UNITED STATES WAS CONSCIOUSLY AND DELIBERATELY FALSE; AND THIS IS AN ADDITIONAL GROUND FOR CANCELLING HIS CERTIFICATE OF NATURALIZATION

Apart from the falsity of petitioner's oath of allegiance, which, as we have shown, requires affirmance of the judgment below, cancellation of petitioner's certificate of naturalization was justified on the additional ground that the represen-

tation in his petition for naturalization, that he was attached to the principles of the Constitution of the United States, was consciously and deliberately false.

For more than a hundred and fifty years, ever since 1795, the naturalization laws have required, as a condition of obtaining American citizenship, that the alien applicant be attached to the principles of the Constitution of the United States. Sec. 1, *Thirdly,* and sec. 2 of the Act of January 29, 1795, c. 20, 1 Stat. 414, 414–415; sec. 1, *Thirdly* and *Fourthly,* of the Act of April 14, 1802, c. 28, 2 Stat. 153, 154; R. S. 2165, *Third* and *Fifth;* sec. 4, *Fourth,* of the Act of June 29, 1906, c. 3592, 34 Stat. 596, 598; sec. 332 (a) (17) of the Act of October 14, 1940, c. 876, 54 Stat. 1137, 1155 (8 U. S. C. 732 (a) (17)).

Just what those principles are, just what minimum of belief must be shown to entitle the alien to American citizenship, we shall discuss in a moment. At this point, by way of preliminary to the subsequent discussion, we summarize the principles to which petitioner was in fact attached.

1. The district judge found, as on the evidence in the present record he was compelled to find, that petitioner on the day of his naturalization was in agreement with the principles of the German American Bund (Fdg. 57, R. 41), and that

his attitude with respect to his attachment to the principles of the Constitution of the United States were the same at that time as during the years 1939 through 1941 (Fdg. 59, R. 41). The Bund principles—and they are not questioned by petitioner here—involved the principle of leadership (Fdg. 11, R. 23), the principle of German racial superiority and unity (Fdg. 12, R. 23–24) which emphasized that allegiance and devotion to Hitler and the German *Volkstum* was superior to any obligation to the United States (Fdg. 14, R. 24), and the anti-democratic principle of National Socialism (Fdg. 16, R. 24–25).

Petitioner, as we have already shown, *supra*, pp. 14, 17–18, was a vociferous champion of the Bund (Fdgs. 40, 47, R. 34, 37–38), which he characterized as "the Fuehrer's grip on American democracy" (Fdg. 40, R. 33–34), preached the doctrine of German racial unity (Fdg. 51, R. 38), enrolled his daughter in the Bund Youth Movement in order that she might imbibe its principles at an impressionable age (Fdg. 45, R. 36–37; compare Fdg. 21, R. 26), and, knowing generally of the Bund aims and tenets (Fdgs. 40, 47, R. 33–34, 37–38), signified in striking fashion his acceptance of the leadership principle by sending Hitler, jointly with the Milwaukee Bund leader, a birthday greeting in 1938 which concluded with the words, "In blind obedience we follow you" (Fdg. 56, R. 41).

On these facts the district judge found (Fdg. 61, R. 42):

> Defendant's belief in and adherence to the concepts of National Socialism as practiced by the Nazi Party in Germany and the German-American Bund in the United States, his activities in promoting the establishment of these concepts in the United States, his opposition to the constitutional principle of political and racial equality of all persons under law regardless of race and color, as evidenced by his campaign of race defilement particularly against the Jews, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant Knauer at the time of his filing his petition for naturalization, at the time of his naturalization, and at all times thereafter was not in fact attached to the principles of the Constitution of the United States and did not intend to support the same.

We believe that this finding, which is supported by clear, unequivocal, and convincing evidence, required the conclusion that petitioner's certificate of naturalization was procured "fraudulently and therefore illegally" (R. 43).

2. However, the decision of this Court in *Schneiderman* v. *United States*, 320 U. S. 118, has been thought by some of the lower federal courts to devitalize the statutory requirement of attachment, in consequence of which there are decisions

which virtually eliminate attachment to the principles of the Constitution as a condition of obtaining citizenship.

Thus, in *United States* v. *Rossler*, 144 F. 2d 463 (C. C. A. 2), the Second Circuit said, *per* L. Hand, J., at p. 465,

> That attachment to the principles of the Constitution which the law exacts at naturalization is not addressed to the heart; it demands no affection for, or even approval of, a democratic system of government; but merely an acceptance of the fundamental political habits and attitudes which here prevail, and a willingness to obey the laws which may result from them. Naturalization expresses the alien's voluntary initiation into the new society of his choice; his change of allegiance may be dictated by any purpose, however personal and selfish, so be it it is not inconsistent with a willingness to throw in his lot with that society and make its fate his own. Patriotism is not a condition of naturalization, any more than it is of continued native citizenship.

And in *United States* v. *Korner*, 56 F. Supp. 242 (S. D. Calif.), it was held that there was no basis for cancelling a defendant's certificate of naturalization where it was shown that he was a member of the Bund during the entire five year period prior to his naturalization, because, forsooth, it was not shown that his activities fell afoul of the clear and present danger rule. Attachment

to the principles of the Constitution is thus satisfied, in the view of that court, just so long as the alien does not actually resort to violence, and is content to carry on his effective Fifth Column subversion in non-violent fashion.

These decisions thus cut out of the statute book a requirement which Congress has kept there for more than a century and a half. The basic unsoundness of the result so reached, quite apart from the unwarranted liberties taken with an Act of Congress, lies in the circumstance that the rulings in question analogize the situation of an alien seeking citizenship to that of an alien who for good and sufficient reason comes to our shores without any intention of changing his nationality. These cases require of the applicant for citizenship only that he be law-abiding.

But every alien in the country must obey our laws, and every alien dwelling here owes a temporary allegiance to the United States, so much so that, if he fails in that allegiance and extends aid and comfort to the enemy, he commits an act of treason. *Carlisle* v. *United States,* 16 Wall. 147; *Radich* v. *Hutchins,* 95 U. S. 210; see *The Schooner Exchange,* 7 Cranch 116, 144; *United States* v. *Wong Kim Ark,* 169 U. S. 649, 655, 658, 693–694; compare *Wildenhus's Case,* 120 U. S. 1.

As Secretary of State Webster said in 1851, in language later quoted with approval by this Court

in *Carlisle* v. *United States*, *supra*, 16 Wall. at 155:

> Every foreigner born residing in a country owes to that country allegiance and obedience to its laws so long as he remains in it, as a duty upon him by the mere fact of his residence, and that temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized states, and nowhere a more established doctrine than in this country. * * * Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that, by the public law, an alien or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be *punished for treason* or other crimes as a native-born subject might be, unless his case is varied by some treaty stipulation.[17]

3. Obviously, attachment to the principles of the Constitution of the United States must mean

[17] The English courts likewise hold that an alien can be guilty of treason. *De Jager* v. *Attorney General of Natal*, [1907] A. C. 326 (Privy Council); *Rex* v. *Joyce*, 90 Sol. J. 2, s. c. *sub nom. Joyce* v. *Director of Public Prosecutions*, 90 Sol. J. 60 (House of Lords).

something more than the allegiance which every alien owes. It must have more content than a mere willingness to abide peacefully within our midst. And, if we go to the debates of the 3rd Congress, where the requirement of attachment was first introduced, we can see that the sponsors of that requirement clearly intended it to have a wider meaning. Those debates, fragmentary in spots though they undoubtedly are, leave no doubt on that vital point.

The Act of 1795 was passed during a period of turmoil, both in Europe and in the New World. The Terror in France was barely over, and the flames of revolution had spread to the island of Haiti. Refugees from both countries flocked to the United States for sanctuary, and fear was expressed in Congress that these immigrants would hold principles not consonant with our ideals. Mr. Sedgwick of Massachusetts gave expression to that fear (4 Annals of Congress 1008):

> The present (Mr. S. said) he believed the most inauspicious time for the indiscriminate admission of aliens to the rights of citizenship. A war, the most cruel and dreadful which had been known for centuries, was now raging in all those countries from which emigrants were to be expected. The most fierce and unrelenting passions were engaged in a conflict, which shook to their foundations all the ancient political structures in Europe. This con-

test was supported on the one hand by men who believed personal political distinctions were necessary to the great purpose of security, and on the other by those who thought that society could be protected and individuals secured by a Government with departments, and without checks; either embracing the principles established here, where, without privileged orders distinct portions of power were to be deposited in different hands, in such manner that it was almost impossible for the mind even to conceive that the different departments should form an union for any mischievous purpose; and altogether impossible to believe that without such concurrence either alone should be capable of executing any wicked design.

Could (he asked) any reasonable man believe, that men who, actuated by such passions, had fought on grounds so opposite, almost equally distant from the happy mean we had chosen, would here mingle in social affections with each other, or with us? That their passions and prejudices would subside as soon as they should set foot in America? or, that, possessing those passions and prejudices, they were qualified to make or to be made the governors of Americans?

Mr. Giles of Virginia therefore proposed an amendment, that an alien be required to be "attached to a Republican form of Government"

in order "to prevent those poisonous communications from Europe, of which gentlemen were so much afraid;" 4 Annals of Congress 1021. The proposal was amended to substitute "attached to the Constitution of the United States" since the term "Republican" was equivocal and a title "assumed by many Governments in Europe, which were upon principles entirely different from ours." Some which were said to have assumed the title of "Republican" had been "Aristocracies of the most hideous form," while "Many call themselves Republican, who, by this word, mean, pulling down every establishment: they were mere Anarchists." *Id.*, pp. 1021–1022.

The debate continued (4 Annals of Congress, 1022–1023):

> Mr. GILES felt himself extremely surprised to hear it asserted on the floor of Congress, that the words "Republican form of Government" meant anything or nothing. He read a passage from the Constitution, whereby a Republican form of Government is guarantied to each of the United States composing the Union. He should, therefore, have imagined, that the words were well understood from one end of the Continent to the other. He did not expect such criticism. He was not sure if he should vote for the clause at all; but if he did so, he should wish the best to be made of it. He then altered his amendment to these words: "attached to the prin-

ciples of the Government of the United States."

Mr. DAYTON. With all the ambition of that gentleman [Mr. Giles] to be called a Democrat, both he and Mr. D. would more properly be called Republicans. He again vindicated his assertion as to the equivocal meaning of the word. A Venetian or Genoese might come to this country, and take the oath as proposed, and then excuse himself by saying, "it was the Republican form of my own country which I had in view." One of the best writers on the British Constitution had called that also a Republic.

Mr. MADISON was of opinion that the word was well enough understood to signify a free Representative Government, deriving its authority from the people, and calculated for their benefit; and thus far the amendment of his colleague was sufficiently proper. Mr. M. doubted whether he himself should, however, vote for the clause, thus amended. It would perhaps be very difficult for many citizens to find two reputable witnesses, who could swear to the purity of their principles for three years back. Many useful and virtuous members of the community may be thrown into the greatest difficulties, by such a procedure. In three years time a person may have shifted his residence from one end of the Continent to the other. How then was he to find evidence of his behaviour

> during such a length of time? But he objected to both amendments on a different ground. It was hard to make a man swear that he preferred the Constitution of the United States, or to give any general opinion, because he may, in his own private judgment, think Monarchy or Aristocracy better, and yet be honestly determined to support this Government as he finds it.

When, therefore, Congress passed the amendment over Madison's objections (4 Annals of Congress 1023), it rejected mere determination to "support this Government as he finds it" while reserving "private judgment" that some other system is better. There is therefore no support for the view of L. Hand, J., *supra*, p. 75, that the "attachment to the principles of the Constitution which the law exacts at naturalization * * * demands no affection for, or even approval of, a democratic system of government." To the contrary, it is clear that from the time of the first naturalization law,[18] Congress intended that "attachment to the Constitution"

[18] The First Naturalization Act of March 26, 1790, c. 3, 1 Stat. 103, required only an oath to support the Constitution, and a two-year residence in the United States. But the latter requirement was imposed in order, first, that the alien might "have an opportunity of knowing the circumstances of our Government, and in consequence thereof, shall have admitted the truth of the principles we hold. Second, that he shall have acquired a taste for this kind of Government." M. J. Stone, 1 Debates in Congress (O. S.), 1789–1790, p. 1157.

contemplated not only adherence to its formal procedure but also subscription to the basic principles of the form of government erected by that instrument.

Now, what were those "principles we hold"? For a proper answer to that question, we must recall to mind the situation of the men who first insisted on the requirement of attachment. They were dealing not with institutions long established, so familiar as to be axiomatic and accepted without question, but with a new government, an experiment in freedom then unlike any other on earth. They had fashioned this government after a long and discouraging war for independence, and after a long and almost more discouraging period of near chaos which threatened the prize so dearly won. Statesmanlike compromise and conciliation had produced a Constitution, and now, in 1795, the government established under that Constitution was functioning in a war-torn world. Across the seas the legislators of that day beheld monarchies, limited and absolute, and revolutionary republics; while at their very doorstep there lay an autonomous province almost entirely composed of recently liberated slaves. In that setting, surely, the "principles of the Constitution of the United States" must have been regarded by them as having an affirmative meaning.

We submit with deference, despite anything said in *Schneiderman* v. *United States*, 320 U. S.

118, that this expression had more substantive content than an attachment to the principle of free speech and to the principle of orderly amendment. Article V and the amending procedure which it prescribes are not a universal solvent which drains of substance every other Article and every Amendment other than the First. Many of the members of the 3d Congress had been members of the Constitutional Convention. Many of them were veterans of the Revolutionary War. Surely, to them, the "principles of the Constitution" meant more than merely a vehicle for orderly change. They had builded a nation, on principles foreign to most of the then civilized world. It simply cannot be believed that, when they insisted that aliens seeking admission into their political fellowship be attached to those principles, they would have been satisfied with a mere promise of lawful conduct. The debates are to the contrary, and, we submit, the overwhelming evidence of historical fact is likewise to the contrary.[19]

4. What, then, were those basic principles, and which of them have validity today? We believe that, certainly for purposes of this case, the minimal principles of the Constitution to which the alien must be attached as a prerequisite to acquiring American citizenship are these:

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[19] Could it fairly be urged that an alien is attached to the principles of the Constitution if he states that, immediately upon naturalization, he intends to press for a constitutional amendment to repeal Amendments I–X, and XIII–XV?

(a) The principle of a Republican Form of Government—"and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *In re Duncan*, 139 U. S. 449, 461. And, as we point out below, pp. 105–109, the guarantee to every State of a Republican Form of Government, Article IV, Section 4, was intended to mean that no state should be permitted to have a monarchial or anti-Republican form of government even if it wanted one.

(b) The principle of Federalism—"an indestructible Union, composed of indestructible States." *Texas* v. *White*, 7 Wall. 700, 725. We believe Federalism to be a fundamental principle of the Constitution, not only because of the prohibition in Article V against any amendment which should deprive a State of its equal suffrage in the Senate, but primarily because the federal adjustment—"The Great Compromise"[20]—was the major problem in the Convention. When that was solved, the other adjustments were readily made.

(c) The principle of a Bill of Rights, delimiting for the protection of individuals and of minori-

[20] See Farrand, *The Framing of the Constitution* (1913) c. VII; Charles Warren, *The Making of the Constitution* (1937 ed.) pt. Two, c. V.

ties areas into which government may not enter. Since this goes beyond the first ten Amendments, it is probably better expressed as the principle of constitutional protection of civil rights and of life, liberty and property.

(d) The principle of a peaceful process of amendment for effecting changes in the organization of the Government.

These, we submit, are the fundamental but minimal principles of our Constitution. An attempt to state them in more detail would involve recital of provisions rather than principles; any effort to collect them with less particularity would, we feel, eliminate distinctive essentials of our form of government and leave only amorphous generalities couched in terms of orderly liberty.[21]

5. Testing petitioner's views against these minimal standards, it is clear, by unequivocal and convincing testimony, beyond a single troubling doubt, that petitioner was never attached to the principles of the Constitution of the United States at any time material to the present proceedings.

He was attached to the principle of leadership, the *Fuehrerprinzip,* as distinguished from the principle of a republican form of government; he was attached to the principle of the racial superiority of the German people (and the inferior-

[21] After searching reflection, we are compelled to reconsider the minimum requirements advanced by the Government in the *Schneiderman* case, 320 U. S. 118, 140, note 20.

ity of all other peoples), as distinguished from the principle of equality of all Americans which is guaranteed by the Fourteenth Amendment and analogous constitutional provisions, and he was attached to the principle of intolerance and the denial of civil liberties, as distinguished from our principle of the constitutional guarantee of such liberties. The evidence has been set out above *in extenso*, *supra*, pp. 4–22; there is no need to repeat it here. Suffice it to say that petitioner was attached to the principles of German National Socialism, principles diametrically opposed to those of the Constitution of the United States. Petitioner was a good Nazi. He could not at the same time be a good American. The differences are irreconcilable.

6. We are not required, in the present case, to consider the questions suggested in *Schneiderman* v. *United States*, 320 U. S. 118, as to whether the requirement that the alien be attached to the principles of the Constitution of the United States lays down an objective or subjective test, or whether, in a suit brought to cancel a certificate of naturalization for lack of attachment, the finding by the naturalization judge that there was an attachment is in and of itself a sufficient compliance with the statute.

(a) Section 4 of the Naturalization Act of 1906 (*infra*, pp. 114–115), which was before this Court

in the *Schneiderman* case, provided in pertinent part that—

> It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least * * * and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States * * *.

The above provision was amended by the Act of March 2, 1929 (*infra*, p. 115) to read as follows:

> No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years * * * and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States * * *.

Petitioner was naturalized under the latter provision. Consequently, at the time of his naturalization, the statutory language made it clear that for admission to citizenship there were requisite certain specified conditions, in fact, and that those conditions were not met merely because the naturalization judge was satisfied, contrary to the fact, that they existed. Such vestige of support as the language of the 1906 Act gave to the con-

tention, that an alien could become a citizen simply by satisfying a court that certain allegations were true regardless of their actual lack of factual basis, has been withdrawn by the 1929 amendment.

(b) Nor is there, on the facts of the present case, any room for speculation whether "behaved as a person * * * attached to the principles of the Constitution" involves simply circumspect outward behavior regardless of inner conviction, or whether that requirement demands a particular state of mind. For petitioner here can not meet even the test of outward behavior. His conduct during the three years immediately prior to his naturalization, from 1934 to 1937, when he bitterly opposed the circulation of any matter critical of Nazi Germany (Fdg. 33, R. 31), when he was active in the campaign to introduce the swastika symbol of National Socialism into the activities of the Federation of German-American Societies (Fdgs. 34–36, R. 31–32), and when he enrolled his daughter in the Bund's Youth Movement (Fdg. 42, R. 35; see Fdg. 21, R. 26), shows conclusively and without contradiction that his behavior was not that of a man attached to the principles of the Constitution of the United States.

Consequently, the representation in his petition for naturalization (Ex. PK 1; Tr. 22), that he was so attached, was knowingly and consciously false,

and warranted cancellation for fraud of the certificate of naturalization procured on the strength thereof. There is no need to repeat at this juncture the authorities marshalled above, *supra*, pp. 60–71. Having regard to the scheme and development of the naturalization laws, attachment to the principles of the Constitution is among the most important requirements imposed. Transfer of allegiance is essential, true enough: but, as we have seen, *supra*, pp. 76–77, even the alien sojourning here owes a temporary allegiance. The alien who seeks citizenship must show an attachment to our principles as well.

IV

THE NORMAL EQUALITY OF TREATMENT ACCORDED NATURALIZED AND NATIVE-BORN CITIZENS DOES NOT PREVENT CONGRESS FROM CONDITIONING THE GRANT OF NATURALIZATION, NOR FROM CANCELLING ANY CERTIFICATE OF NATURALIZATION OBTAINED IN DISREGARD OF THE PRESCRIBED CONDITIONS

Petitioner argues (Pet. Br. 30–31) that "Once a person with the jurisdictional qualifications is admitted to citizenship, he is as a drop of water in the ocean, or a part of the blue in the sky and loses his alien character. He wears no stigmatizing letter, no identifying apparel, no leading strings, nor straight jacket, as Mr. Justice Murphy terms it. He belongs, and is free to say and do in the American way. He may traduce and denounce or praise and glorify; he may point with pride and

view with alarm; he may organize, lead or follow as is the result of liberty of speech and action. He is a citizen."

Within limitations, we may concede the soundness of the foregoing. But the normal equality of treatment accorded naturalized and native-born citizens does not prevent Congress from attaching conditions to the grant of citizenship by naturalization, conditions which are not requisite to the acquisition of citizenship by birth, nor does it preclude Congress from providing for the cancellation of any certificate of naturalization which was obtained in disregard of the prescribed conditions.

1. Just as the laws of the United States generally favor the individual entering the United States by birth and thus becoming a citizen thereof over the alien who seeks to enter the United States as an immigrant, and likewise favor the citizen over the alien who, once admitted, seeks to remain in the United States, so also is a discrimination apparent when the grant of citizenship by naturalization is compared with the grant of citizenship by birth. For persons born in the United States, citizenship is acquired by birth, regardless of race. Amendment XIV, Section 1; *United States* v. *Wong Kim Ark*, 169 U. S. 649; *Morrison* v. *California*, 291 U. S. 82, 85; cf. Amendment XV. But we deny the privilege of citizenship by naturalization to high-caste Hindus, *United States* v.

Thind, 261 U. S. 204, and to Japanese, *Ozawa* v. *United States,* 260 U. S. 178; *Yamashita* v. *Hinkle,* 260 U. S. 199; *Toyota* v. *United States;* 268 U. S. 402, while the right of Filipinos to become American citizens turns on whether or not they have served in the armed forces of the United States in enumerated wars. 8 U. S. C., Supp. IV, 703.

When, therefore, a person outside the racial categories eligible for naturalization has been naturalized, his certificate of naturalization is thereafter subject to cancellation by suit, *United States* v. *Thind,* 261 U. S. 204; *Toyota* v. *United States,* 268 U. S. 402, or it may be disregarded as a nullity. *Yamashita* v. *Hinkle,* 260 U. S. 199. But the citizenship of the Japanese born in the United States cannot be thus disregarded. *Regan* v. *King,* 49 F. Supp. 222 (N. D. Calif.), affirmed. 134 F. 2d 413 (C. C. A. 9), certiorari denied, 319 U. S. 753.

2. Similarly, the adult alien who seeks citizenship must speak English, 8 U. S. C. 704, though the native-born citizen need not do so as a condition of retaining his birthright. Indians are citizens and have been since 1924 (Act of June 2, 1924, c. 233, 43 Stat. 253), yet many of them speak only their tribal tongue, and the Constitution of New Mexico, when that State was admitted in 1912, provided that all laws should be published in Spanish as well as in English, for the first twenty years of statehood. N. M. Const., Art. 20, Sec. 12; see N. M. Laws 1931, c. 113; compare Sec. 3

of the Joint Resolution of August 21, 1911, 37 Stat. 39, 40, 41, prescribing Sections 1 and 4 of Art. XIX of the New Mexico Constitution.

In like manner, and this is of the essence in the present case, while the alien since 1795 has been required to be attached to the principles of the Constitution as a prerequisite to obtaining citizenship, *supra*, p. 72, the native-born citizen is not required to prove such attachment as a condition to retaining citizenship.

3. Even when the alien has been duly naturalized, he is still not on a complete parity with the native-born citizen. He can never be President. Article II, Section 1, Clause 5. He must wait seven years before he is eligible to be a Representative in Congress, Article I, Section 2, Clause 2, and nine years before he can be a Senator. Article 1, Section 3, Clause 3.[22] And in view of the law as to expatriation, it is clear that he has not the same freedom as the native-born citizen to change his residence.

The provision that a naturalized American citizen, returning to the land of his birth and remaining there for a stated period *animus manendi*, thereby expatriates himself, is first found in the

[22] The oft-repeated dictum from *Luria* v. *United States*, 231 U. S. 9, 22, that "Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency," overlooks the two constitutional provisions last cited.

so-called Bancroft treaties.[23] Thereafter it was made universally applicable to naturalized citizens returning to all countries of origin. Section 2 of the Act of March 2, 1907, 34 Stat. 1228. But there was only a presumption of expatriation; "it is a matter of option and intention." *United States* v. *Gay*, 264 U. S. 353, 358. In the face of the Government's obligation to accord to naturalized citizens abroad the same protection that it extends to native-born citizens, R. S. 2000; 8 U. S. C. 903a, the presumption rule broke down in practice. See Codification of the Nationality Laws of the United States, part 1, pp. 69–76, notes under draft Sec. 402; Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess., on H. R. 6127, superseded by H. R. 9980, pp. 493–501. Accordingly, the Nationality Act of 1940 prescribes that, subject to stated exceptions, the naturalized citizen loses his American nationality entirely by residing abroad for a period varying from two

[23] Art. IV of the Treaty of February 22, 1868, with the King of Prussia in the name of the North German Confederation, 15 Stat. 615, 616; Art. IV of the Treaty of May 26, 1868, with Bavaria, 15 Stat. 661, 662 (but see Art. III of the Protocol, 15 Stat. at 664–666); Art. IV of the Treaty of July 27, 1868, with Wurttemberg, 16 Stat. 735, 736; Art. IV of the Treaty of August 1, 1868, with Hesse, 16 Stat. 743, 745. See also Art. III of the Treaty of January 22, 1873, with Denmark, 17 Stat. 941, 942–943. Compare Art. III of the Treaty of May 13, 1870, with Great Britain, 16 Stat. 775, 776.

to five years. Sections 404–406; 8 U. S. C. 804–806. The native-born citizen is not under the same restraint, and, subject only to a presumption of expatriation in two instances—Sections 402, 401 (c), (d); 8 U. S. C. 802, 801 (c), (d)—can wander about the globe at will and settle down anywhere, for any length of time, without danger of losing his citizenship. The constitutionality of these provisions has never been questioned. See *Perkins* v. *Elg*, 307 U. S. 325, 329. And this Court has unanimously sustained the cancellation of a certificate of naturalization where the naturalized citizen took up his residence abroad immediately after he became a citizen. *Luria* v. *United States*, 231 U. S. 9.

The true basis for sustaining the cancellation, we submit, is the circumstance that citizenship is made available to aliens on condition that they reside permanently in the United States. Section 4, Subdivision Second, Act of June 29, 1906, c. 3592, 34 Stat. 596, 597; Sections 331 (15) and 332 (a) (18) of the Nationality Act of 1940, 8 U. S. C. 731 (15) and 732 (a) (15). If they refuse to comply with that condition, for any reasons that fall outside the exceptions in the expatriation statutes, then the citizenship extended to them on those conditions is withdrawn. They are free to migrate as they wish, or to avail themselves through naturalization elsewhere of

their inherent right of expatriation. R. S. 1999; 8 U. S. C. 800. They are not subject to any species of statutory *ne exeat*. But if they choose to reside permanently elsewhere, and violate the condition on which they were given their citizenship, they cannot be heard to complain when the gift is withdrawn in consequence.

4. The same principles apply to the beliefs which Congress requires that aliens hold as a prerequisite to admission into the country, to continued residence in the country, and to naturalization. Thus, persons who believe in the practice of polygamy, 8 U. S. C. 136 (f), and persons who oppose organized government or advocate the violent overthrow of government, 8 U. S. C. 137, are excluded from entry into the United States, and, if admitted, are thereafter subject to deportation. 8 U. S. C. 154, 155a; see *Turner* v. *Williams*, 194 U. S. 279. Anarchists and advocates of the forcible overthrow of government are ineligible for citizenship. 8 U. S. C. 705.[24] But native-born polygamists and anarchists are not subject to expulsion, nor do they risk loss of their nationality by acts falling short of actual attempts by force

[24] Believers in polygamy formerly were. Section 7 of the Act of June 29, 1906, c. 3592, 34 Stat. 596, 598, 8 U. S. C. (1934 ed.) 364. We have not examined the legislative history of the Nationality Act of 1940 to ascertain the reason why this restriction was dropped, or why the statement of a petitioner's disbelief in polygamy is no longer required by statute in the petition for naturalization.

to overthrow the United States, 8 U. S. C. 801 (h).

We do not deny entry to the United States to otherwise qualified aliens simply because they believe in a monarchical form of government or in the principle that a nation's rulers are better selected through the accident of birth than through the tumult of popular elections. Nor did we prior to December 11, 1941, exclude aliens who believed in the tenets of National Socialism, or who felt that fascism was the wave of the future which would sweep all before it. And, subject to the clear and present danger test, such alien fascists and alien monarchists were free to think their thoughts and to speak them freely. Just so long as they did not actually incite to violence, they were within the protection of the First Amendment.

But by the very profession of their beliefs, they showed themselves attached to principles which were and are opposed to the principles of the Constitution of the United States. Not being attached to the latter set of principles, they were not and are not eligible for citizenship.

It is essential, we submit, to distinguish between, on the one hand, the constitutional freedom of expression, which is limited only by the clear and present danger test, and which applies to citizens and aliens alike, and on the other, the

undoubted right of Congress to insist that aliens may be admitted into our political fellowship only when they are attached to those fundamental principles which constitute the common understanding which is an essential prerequisite to the proper functioning of a free society.

We believe it apposite to recall here some words of Lord Balfour which were quoted by Mr. Justice (then Mr. Attorney General) Jackson, on the occasion of this Court's one hundred and-fiftieth anniversary (309 U. S. at viii):

> Our alternating Cabinets, though belonging to different parties, have never differed about the foundation of society, and it is evident that our whole political machinery presupposes a people so fundamentally at one that they can afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict. May it always be so.

It is precisely in order that we may remain a people fundamentally at one that Congress has insisted, for over a century and a half, that the alien seeking citizenship be attached to the principles of our Constitution. He is free to disagree with those principles as an alien; he is free to carry on his business and to be secure in his liberty and property as an alien; in the past, at least, he might even vote despite his

alienage;[25] he is free, provided he does not incite to violence, to write and speak in favor of principles other than those of our Constitution if he thinks those other principles preferable; but if he seeks to enter our political fellowship, our bond of citizenship, then he must be at one with us in our common understanding. He is not being denied freedom because Congress insists that he share certain beliefs as a condition of acquiring American citizenship, or because the native-born citizen need not share those same beliefs as a condition to retaining American citizenship.

5. When, therefore, conduct immediately subsequent[26] to naturalization is examined with a view to ascertaining compliance or non-compliance with the condition, the naturalized citizen is not being put into a strait jacket. The inquiry is simply whether he has honestly acquired his citizenship.

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[25] *Minor* v. *Happersett*, 21 Wall. 162, 177; *Boyd* v. *Thayer*, 143 U. S. 135, 168, 175; *Lanz* v. *Randall*, 4 Dill. 425, Fed. Case No. 8080 (C. C. D. Minn.). *Per contra*, prior to the XIX Amendment, women had no federal right to vote even though they were citizens. *Minor* v. *Happersett*, *supra*.

[26] We say, "immediately subsequent", because if the alien was attached to our principles at the time of naturalization, he is free to change his mind thereafter. But the shorter the interval between the date of naturalization and the date of the change of heart, the more convincing the evidence that there was no change at all. Compare pp. 42–45, *supra*; compare the facts in *Baumgartner* v. *United States*, 322 U. S. 665. In the present case, as we have demonstrated in some detail, petitioner was never at any time attached to our principles.

As we have pointed out, *supra*, pp. 93–95, the alien obtains his citizenship on condition that he reside here permanently, that he cast in his lot with ours. If he resides elsewhere, he loses his citizenship by operation of law or, as in *Luria* v. *United States*, 231 U. S. 9, by cancellation of his certificate of naturalization. And it is no answer to say that a person born in the United States could, without jeopardizing his nationality, reside all his life outside the country.

The Act of March 27, 1942, c. 199, sec. 1001, 56 Stat. 176, 182, which added Title III to the Nationality Act of 1940, 8 U. S. C., Supp. IV, 1001–1005, provided a more expeditious naturalization procedure for persons who had served or were serving in the armed forces of the United States during the present war. Section 704 of Title III (8 U. S. C., Supp. IV, 1004) provided "That citizenship granted pursuant to this title may be revoked as to any person subsequently dishonorably discharged from the military or naval forces in accordance with Section 338 of this Act" (*infra*, pp. 113–114). That is to say, citizenship with many procedural requirements waived was made available to aliens serving in our forces, but on condition that their further service be honorable. If an alien so naturalized were subsequently tried and convicted of, for example, misbehavior before the enemy in violation of the 75th Article of War (10 U. S. C. 1547), and were sentenced to a dishonorable discharge, after which

proceedings to cancel his certificate of naturalization were begun, we submit that he could not successfully interpose the defense that the statute was invalid because a native-born soldier similarly convicted and dishonorably discharged would not thereby forfeit citizenship. Compare 8 U. S. C. 801 (g), (h). For the grant of citizenship under Title III was conditioned on subsequent honorable service.

The same situation applies here. The native-born citizen, by and large, is attached to the principles of the Constitution of the United States. But even if he is not, even if he campaigns in orderly fashion for monarchy or some other anti-republican form of government, he does not forfeit the citizenship which is his birthright. The naturalized citizen, on the other hand, obtains his citizenship only on condition that he has behaved as a man attached to the principles of the Constitution. He makes, under oath, a written representation that he is so attached. 8 U. S. C. 732 (a) (17). When, therefore, on the day following his naturalization, the naturalized citizen embarks on a peaceful campaign for an American monarchy untrammelled by the restrictions of any Bill of Rights, it is strong and convincing evidence American Constitution on the day he was admitted to citizenship, and that his representation to the that he was not attached to the principles of the contrary was knowingly false.

It is not a question of denying such a person freedom of speech and thought, or of strapping him into an intellectual strait jacket. It is simply a matter of insisting that, where citizenship is granted on a specified condition, it be not retained by one who has fraudulently represented that the condition was met when in fact, as he well knew, it was not. We do not deny such a person his freedom of speech; we do deny him the fruits of his fraud.

Nor can it fairly be said that, under the facts of the supposed case, there is neither citizenship nor adjudication. As well might it be said that in *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, *there was no patent* for invention, because years later the patent was held subject to cancellation by reason of having been procured by fraud, or that in the same case there had been no adjudication because some twelve years after the first judgment had been entered this Court ordered that it be set aside for fraud. Surely there is no constitutional difference between setting aside for extrinsic fraud a judgment upholding a patent for invention and setting aside for intrinsic fraud a judgment granting a certificate of naturalization. Indeed, so far as injury to the body politic is concerned, there is less harm in an outstanding patent fraudulently obtained than there is in permitting a person opposed to the principles of our Constitution to continue to hide behind the citizenship

which he acquired through his fraudulent representation that he was attached to those principles. Every public interest demands that he be stripped of what he wrongfully obtained, and certainly there is no constitutional compulsion which requires this Court to place a premium on his up-to-now successfully perpetrated fraud.

V

THE PROTECTION ACCORDED FREEDOM OF THOUGHT DOES NOT REQUIRE THE CONSTITUTION TO GUARANTEE ITS OWN SELF-DESTRUCTION

Implicit in the decision of this Court in *Schneiderman* v. *United States*, 320 U. S. 118, is a broad concept of freedom of thought based on the dissenting opinion of Mr. Justice Holmes in *United States* v. *Schwimmer*, 279 U. S. 644, 653–655. The apposite portion of that dissent is the eloquent and frequently quoted sentence.

> * * * if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.

This follows in substance the views earlier expressed by Mr. Justice Holmes in his equally eloquent and equally well-known dissent in *Abrams* v. *United States*, 250 U. S. 616, 624, 630:

> But when men have realized that time has upset many fighting faiths, they may come

> to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution.

The same thoughts are expressed in greater detail in Mr. Justice Brandeis' concurring opinion in *Whitney* v. *California,* 274 U. S. 357, 372–378.

Sentences in judicial opinions torn from their factual context, however brilliantly they may be phrased, seldom encompass a whole complex concept, particularly where, as in the cases referred to, the concept involved is both broad and amorphous. "Freedom for the thought that we hate" is a quotable phrase, but that it does not accurately represent the full constitutional views even of its author becomes abundantly clear when one recalls that it was also Mr. Justice Holmes who spoke for a unanimous Court in *Schenck* v. *United States, Frohwerk* v. *United States,* and *Debs* v. *United States,* 249 U. S. 47, 204, 211. Obviously, "freedom for the thought that we hate" had qualifications, even for judges who eloquently contended for lesser limitations than the majority of this Court thought proper.

Moreover, the Constitution itself provides limitations on the concept of "freedom for the thought that we hate." The Founders took care that for at least one hated thought there should never be freedom, and, far from establishing a forum for ideas in which it might emerge victorious, ordained that this particular thought should never triumph, even peacefully and through the force of reason alone.

For the Constitution provides in Section 4 of Article IV that "The United States shall guarantee to every State in this Union a Republican Form of Government."

A similar provision had been included as the 11th resolve of the Virginia Plan presented to the Convention by Governor Edmund Randolph of that State.[27] When that item was taken up for discussion on June 11, 1787,

> Mr. Madison moved an amendment, to add to or alter the resolution as follows: *The republican constitutions and the existing laws of each state, to be guaranteed by the United States.*[28]
>
> Mr. Randolph was for the present amendment, because a republican govern-

[27] 1 Farrand, *Records of the Federal Convention* (1911) 22; Farrand, *The Framing of the Constitution* (1913) 68, 228. The development of this provision is conveniently traced in Charles Warren, *The Making of the Constitution* (1937 ed.) 601–604.

[28] Italics in original.

ment must be the basis of our national union; and no state in it ought to have it in their power to change its government into a monarchy.—Agreed to. (1 Farrand, *Records of the Federal Convention,* 206)

When the problem was next presented to the Convention, on July 18, 1787, the guarantee appeared as the 16th Resolution. The debates, while more discursive, still show that the members were unwilling to permit any state to establish a monarchial form of government (2 Farrand, *Records of the Federal Convention,* 47–49):

Resol. 16. "That a Republican Constitution & its existing laws ought to be guaranteid to each State by the U. States."

* * * * *

Mr. Ghorum[29] thought it strange that a Rebellion should be known to exist in the Empire, and the Genl. Govt. shd. be restrained from interposing to subdue it. At this rate an enterprising Citizen might erect the standard of Monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole & the Genl. Govt. be compelled to remain an inactive witness of its own destruction. With regard to different parties in a State; as long as they confine their disputes to words they will be harmless to the Genl. Govt. & to each other. If they appeal to the sword

[29] Nathaniel Gorham of Massachusetts.

it will then be necessary for the Genl. Govt., however difficult it may be to decide on the merits of their contest, to interpose & put an end to it.

Mr. CARROL: Some such provision is essential. Every State ought to wish for it. It has been doubted whether it is a casus federis at present. And no room ought to be left for such a doubt hereafter.

Mr. Randolph moved to add as amendt. to the motion; "and that no State be at liberty to form any other than a Republican Govt." Mr. (Madison) seconded the motion.

Mr. Rutlidge thought it unnecessary to insert any guarantee. No doubt could be entertained but that Congs. had the authority if they had the means to co-operate with any State in subduing a rebellion. It was & would be involved in the nature of the thing.

Mr. Wilson moved as a better expression of the idea, "that a Republican (form of Government. shall) be guarantied to each State & that each State shall be protected agst. foreign & domestic violence.

This seeming to be well received, Mr. (Madison) & Mr. Randolph withdrew their propositions & on the Question for agreeing to Mr. Wilson's motion it passed nem. con.

When the new Constitution had been adopted and was awaiting certification, its provisions were authoritatively expounded by *The Federalist*. In

No. XLIII of that work, the limitation placed on the States by Section 4 of Article IV was clearly explained:

> But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? * * * Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican for anti-republican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance.

That is to say, the men who framed our Constitution, after independence had been won and chaos averted, declared a preference, and erected barriers and guarantees lest that preference, the republican form of government, be endangered. They were building a nation which should endure, not a mere marketplace for the interchange of competing political theories. Their guarantee ran to a republican form of government, not simply to a free trade in ideas. Having fought monarchy for long and hard years in the face of terrible odds, they were not quixotic enough to cast away the prize of independence by providing new sanctuaries where that hated institution might conveniently reappear. Indeed, they intended to leave no scope for any anti-republican

form of government, for these men of 1787, though they knew nothing of swastikas, or of blood unity, or of the vile brew that later was labelled fascism, yet were fully aware, good classicists that they were, of the excesses of tyranny in the days of ancient Greece and Rome. And for anti-republican forms of government, whether of kings by divine right or of tyrants by irresistible force, they never intended to provide a foothold. Certainly they did not propose to cancel out every other principle they held by embracing an absolute and unqualified freedom of thought.

But it is urged that Jefferson's writings reflect the very ideas that Mr. Justice Holmes expressed over a century later. See *Schneiderman* v. *United States,* 320 U. S. 118, 137–138, note 15, and materials there cited. Reliance is generally had on one sentence from Jefferson's First Inaugural.

> If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.

The fact of the matter is, however, that Jefferson is not an entirely safe guide on the issues now under consideration. He was not a member of the Constitutional Convention, being at the time Minister to France, and had no access to its records during his lifetime. His letter to Samuel Kercheval,

written in 1816, in which he deprecates looking at constitutions with sanctimonious reverence,[30] is merely an individual attitude which is hardly representative of the views of those who framed the Constitution in 1789, or of those who in 1795 decided to admit to citizenship only those aliens who were "attached to the principles of the Constitution of the United States," or of those who in later years were called upon to interpret the Constitution.

The course of American history has not followed the Jeffersonian view. For, if Jefferson was right, if those "who would wish to dissolve this Union" should "stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it," then Lincoln was wrong, and the men who fought to preserve the Union were wrong, and we should now be two nations instead of one.

There is no occasion here for attempting to delimit in detail the extent to which Congress may constitutionally qualify "freedom for the thought that we hate." It is enough that the Constitution itself, the decisions of this Court, and the course of American history, make it clear that limits do exist, and that "freedom for the thought that we hate" is not such an immutable absolute that the only other constitutional guarantee remaining

[30] 10 *The Writings of Thomas Jefferson* (Ford's ed.), 37, 42, quoted in *Schneiderman* v. *United States*, 320 U. S. 118, 137, note 15.

is the Constitution's guarantee of its own self-destruction. Freedom of thought does not cancel out everything that makes all the other freedoms possible.

As the present record shows (Con. Tr. 611 *et seq.*), Hitler prior to 1923 "never had any intention of trying to obtain political power in Germany except by means of force, except by violence, by a coup d'etat, or a similar direct action method." It was only after the failure of his 1923 *Putsch* "that he with his advisers decided that the way to do away with democracy in Germany was to use democracy—was to use the democratic rights and privileges with the explicit aim of paralyzing democracy and the democratic procedures * * *." By allowing full "freedom for the thought that we hate," by opening its market places to "the monstrous and debauching power of the organized lie," the Germany of the Weimar Republic effectively signed its own death warrant. Nothing in our Constitution imperatively requires us to follow the German example.

The narrow question here is whether "freedom for the thought that we hate" extends to such a point that an alien who at the time of his naturalization knowingly espouses a philosophy which is contrary to the basic principles of our Constitution, a philosophy which seeks to destroy such freedom as we unquestionably do have, must be admitted to citizenship on making application

therefor after he has lived here for five years and has obeyed our laws. We think the answer to that question is clear, that the Constitution does not require the naturalization of such an alien, and that the statute expressly forbids it. A decree of naturalization obtained by such an alien is therefore voidable, and is subject to cancellation under the statute. That is particularly true where, as here, the grant of citizenship was obtained by means of fraud and was used "as a good thing to hide behind."

Whatever may be the proper scope of freedom of thought, it does not require the granting of citizenship to the enemies of freedom, nor does it grant immunity from fraud to one who takes advantage of American freedom that he may be the better able to destroy it.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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MARCH 1946.

APPENDIX

Sec. 15 of the Act of June 29, 1906, in its amended form, upon the date of the petitioner's naturalization, provided:

> It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * * (Act of June 29, 1906, c. 3592, sec. 15, 34 Stat. 601, as amended, 8 U. S. C. (1934 ed.) 405.)

Sec. 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1158 (8 U. S. C. (1940 ed.) 738) provides:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling

the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

Subdivision Third of Sec. 4 of the Act of June 29, 1906, upon the date of the petitioner's naturalization, provided in part:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or a subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 597, 8 U. S. C. (1934 ed.) 381.)

Prior to March 2, 1929, Subdivision Fourth of sec. 4 of the 1906 Act provided in part:

> It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the

applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 598, 8 U. S. C. (1926 ed.) 382.)

Section 6 (b) of the Act of March 2, 1929, c. 536, 45 Stat. 1512, 1513–1514 (8 U. S. C. (1934 ed.) 382), amended the above provision to read as follows:

No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition.

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SUPREME COURT OF THE UNITED STATES.

No. 510.—October Term, 1945.

Paul Knauer, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 10, 1946.]

Mr. Justice Douglas delivered the opinion of the Court.

Knauer is a native of Germany. He arrived in this country in 1925 at the age of 30. He had served in the German army during World War I and was decorated. He had studied law and economics in Germany. He settled in Milwaukee, Wisconsin, and conducted an insurance business there. He filed his declaration of intention to become a citizen in 1929 and his petition for naturalization in 1936. He took his oath of allegiance and was admitted to citizenship on April 13, 1937. In 1943 the United States instituted proceedings under § 338 (a) of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U. S. C. § 738 (a), to cancel his certificate of naturalization[1] on the ground that it had been secured by fraud in that (1) he had falsely and fraudulently represented in his petition that he was attached to the principles of the Constitution and (2) he had taken a false oath of allegiance. The District Court was satisfied beyond a reasonable doubt that Knauer practiced fraud when he obtained his certificate of naturalization. It found that he had not been and is not attached to the principles of the Constitution and that he took a false oath of allegiance. It accordingly entered an order cancelling his certificate and revoking the order admitting him to citizenship. The Circuit Court of Appeals affirmed. 149 F. 2d 519. The case is here on a petition for a

[1] Sec. 338(a) of the Nationality Act of 1940 provides:

"It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

writ of certiorari which we granted to examine that ruling in light of our decisions in *Schneiderman v. United States*, 320 U. S. 118 and *Baumgartner v. United States*, 322 U. S. 665.

I. In the oath of allegiance which Knauer took he swore that he would "absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the German Reich", that he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic"; that he would "bear true faith and allegiance to the same" and that he took "this obligation freely without any mental reservation or purpose of evasion."[2] The first and crucial issue in the case is whether Knauer swore falsely and committed a fraud when he promised under oath to forswear allegiance to the German Reich and to transfer his allegiance to this nation. Fraud connotes perjury, falsification, concealment, misrepresentation. When denaturalization is sought on this (*Baumgartner v. United States*, *supra*) as well as on other grounds (*Schneiderman v. United States*, *supra*), the standard of proof required is strict. We do not accept even concurrent findings of two lower courts as conclusive. *Baumgartner v. United States*, *supra*, pp. 670-671. We reexamine the facts to determine whether the United States has carried its burden of proving by "clear, unequivocal, and convincing" evidence, which does not leave "the issue in doubt", that the citizen who is sought to be restored to the status of an alien obtained his naturalization certificate illegally. *Schneiderman v. United States*, *supra*, p. 158.

That strict test is necessary for several reasons. Citizenship obtained through naturalization is not a second-class citizenship. It has been said that citizenship carries with it all of the rights and prerogatives of citizenship obtained by birth in this country "save that of eligibility to the Presidency." *Luria v. United States*, 231 U. S. 9, 22. There are other exceptions of a limited character.[3] But it is plain that citizenship obtained through nat-

[2] Since 1795 an alien seeking admission to citizenship in this country has been required to swear that he renounced allegiance to all foreign powers including his native land. 1 Stat. 103, 414; 2 Stat. 153, 154; R. S. 2165; 34 Stat. 596, 598; 54 Stat. 1137, 1157.

[3] Thus a naturalized citizen must wait seven years before he is eligible to sit in the House (Article I, Section 2) and nine years before he can sit in the Senate. Article I, Section 3. Furthermore, a naturalized citizen may lose his American citizenship by residing abroad for stated periods. Secs. 404-406, Nationality Act of 1940, 54 Stat. 1137, 1170, 8 U. S. C. §§ 804 seq. See Perkins v. Elg, 307 U. S. 325, 329.

uralization carries with it the privilege of full participation in the affairs of our society, including the right to speak freely, to criticize officials and administrators, and to promote changes in our laws including the very Charter of our Government. Great tolerance and caution are necessary lest good faith exercise of the rights of citizenship be turned against the naturalized citizen and be used to deprive him of the cherished status. Unpopular expressions, extreme views, even the promotion of ideas which run counter to our American ideals, are not to be given disloyal connotations in absence of solid, convincing evidence that that is their significance. Any other course would run counter to our traditions and make denaturalization proceedings a handy instrument for political persecutions. As stated in *Schneiderman* v. *United States*, *supra*, p. 159, "Were the law otherwise, valuable rights would rest upon a slender reed, and the security of the status of our naturalized citizens might depend in considerable degree upon the political temper of majority thought and the stresses of the times."

These are extremely serious problems. They involve one of the fundamental principles of our political system designed for the protection of minorities and majorities alike. They also involve tremendously high stakes for the individual. For denaturalization, like deportation, may result in the loss "of all that makes life worth living." *Ng Fung Ho* v. *White*, 259 U. S. 276, 284. Hence, where the fate of a human being is at stake we must not leave the presence of his evil purpose to conjecture. Cf. *Bridges* v. *Wixon*, 326 U. S. 135, 149. Furthermore we are dealing in cases of this kind with questions of intent. Here it is whether Knauer swore falsely on April 13, 1942. Intent is a subjective state, illusory and difficult to establish in absence of voluntary confession. What may appear objectively to be false may still fall short of establishing an intentional misrepresentation which is necessary in order to prove that the oath was perjurious. And as *Baumgartner* v. *United States*, *supra*, indicates, utterances made in years subsequent to the oath are not readily to be charged against the state of mind existing when the oath was administered. 322 U. S. p. 675. Troubled times and the emotions of the hour may elicit expressions of sympathy for old acquaintances and relatives across the waters. "Forswearing past political allegiance without reservation and full assumption of the

obligations of American citizenship are not at all inconsistent with cultural feelings imbedded in childhood and youth." *Baumgartner* v. *United States, supra,* p. 674. Human ties are not easily broken. Old social or cultural loyalties may still exist, though basic allegiance is transferred here. The fundamental question is whether the new citizen still takes his orders from, or owes his allegiance to, a foreign chancellory. Far more is required to establish that fact than a showing that social and cultural ties remain. And even political utterances, which might be some evidence of a false oath if they clustered around the date of naturalization, are more and more unreliable as evidence of the perjurious falsity of the oath the further they are removed from the date of naturalization.

We have read with care the voluminous record in this case. We have considered the evidence which antedates Knauer's naturalization (April 13, 1937), the evidence which clusters around that date, and that which follows it. We have considered Knauer's versions of the various episodes and the versions advanced by the several witnesses for the United States. We have considered the testimony and other evidence offered by each in corroboration or impeachment of the other's case. We have considered the appraisal of the veracity of the witnesses by the judge who saw and heard them and have given it that "due regard" required by the Rules of Civil Procedure. Rule 52(a). We conclude with the District Court and the Circuit Court of Appeals that there is solid, convincing evidence that Knauer before the date of his naturalization, at that time, and subsequently was a thoroughgoing Nazi and a faithful follower of Adolph Hitler. The conclusion is irresistible, therefore, that when he forswore allegiance to the German Reich he swore falsely. The character of the evidence, the veracity of the witnesses against Knauer as determined by the District Court, the corroboration of challenged evidence presented by the government, the consistent pattern of Knauer's conduct before and after naturalization convince us that the two lower courts were correct in their conclusions. The standard of proof, not satisfied in either the *Schneiderman* or *Baumgartner* cases, is therefore plainly met here.

We will review briefly what we, as well as the two lower courts, accept as the true version of the facts.

As early as 1931 Knauer told a newly arrived immigrant who came from the same town in Germany that in his opinion the aim of Hitler and the Nazi party was good, that it would progress.

and that it was necessary to have the same party in this country because of the Jews and the Communists. During the same period he told another friend repeatedly that he was opposed to any republican form of government and that Jewish capital was to blame for Germany's downfall. He visited Germany for about six months in 1934 and while there read Hitler's Mein Kampf. On his return he said with pride that he had met Hitler, and that he had been offered a post with the German government at 600 marks per month; that Hitler was the savior of Germany, that Hitler was solving the unemployment problem while this country was suffering from Jewish capitalism, that the Hitler youth organization was an excellent influence on the children of Germany. On occasions in 1936 and 1937 he was explosive in his criticism of those who protested against the practices and policies of Hitler.

The German Winter Relief Fund was an official agency of the German government for which German consulates solicited money in the United States. In the winter of 1934-1935 Knauer was active in obtaining contributions to the Fund and forwarded the money collected to the German consulate in Chicago.

The German-American Bund had a branch in Milwaukee. Its leader was George Froboese—midwestern gauleiter and later national leader. The Bund taught and advocated the Nazi philosophy—the leadership principle, racial superiority of the Germans, the principle of the totalitarian state, Pan-Germanism and of Lebensraum (living space). It looked forward to the day when the Nazi form of government would supplant our form of government. It emphasized that allegiance and devotion to Hitler were superior to any obligation to the United States.[4] Knauer denied

[4] A number of denaturalization cases in the District Court raised the question as to the nature of the Bund. All of them were consolidated for trial on that single issue, including Knauer's case. At the conclusion of the consolidated trial on that issue, Knauer's case was separately tried. But the findings as to the nature of the Bund were made on the basis of evidence in the consolidated trial. The consolidation of the cases was challenged and upheld in the Circuit Court of Appeals. 149 F. 2d p. 520. No such error is alleged here.

These findings by the District Court as to the nature of the Bund are likewise not challenged here. For similar findings respecting the nature of the Bund see United States *v.* Schuchhardt, 49 F. Supp. 567, 569; United States *v.* Ritzen, 50 F. Supp. 301, 302; United States *v.* Haas, 51 F. Supp. 910, 911; United States *v.* Wolter, 53 F. Supp. 417, 418-425; United States *v.* Sautter, 54 F. Supp. 22; United States *v.* Holtz, 54 F. Supp. 63, 66-70; United States *v.* Baecker, 55 F. Supp. 403, 404-408; United States *v.* Bregler, 55 F. Supp. 837, 839-840; United States *v.* Wilmovski, 56 F. Supp. 63, 64; United States *v.* Claassen, 56 F. Supp. 71, 72.

that he was a member of the Bund. But the District Court found to the contrary[5] on evidence which is solid and convincing.

Knauer participated in Bund meetings in 1936. In the summer of 1936 he and his family had a tent at the Bund camps. In the fall of 1936 he enrolled his young daughter in the Youth Movement of the Bund—a group organized to instill the Nazi ideology in the minds of children of German blood. They wore uniforms, used the Nazi salute, and were taught songs of allegiance to Hitler. Knauer attended meetings of this group.

The Federation of German-American Societies represented numerous affiliated organizations consisting of Americans of German descent and sought to coordinate their work. It was the policy of the Bund to infiltrate older German societies. This effort was made as respects the Federation. Knauer assisted Froboese and others between 1933 and 1936 in endeavoring to have the swastika displayed at celebrations of the Federation. In 1935 Knauer reprimanded a delegate to the Federation for passing out pamphlets opposing the Nazi government in Germany. At a meeting of the Federation in 1935 Knauer moved to have the Federation recognize the swastika as the flag of the German Reich. The motion failed to carry. In 1936 the swastika flag was raised at a German Day celebration without approval of the Federation. A commotion ensued in which Bundists in uniform participated, as a result of which the swastika flag was torn down. At the next meeting of the Federation Knauer proposed a vote indicating approval of the showing of the swastika flag. The motion failed and a vote of censure of the chairman was passed. The chairman resigned. Thereupon Froboese and others proposed the formation of the German-American Citizens Alliance to compete with the Federation. It was organized early in 1937. The constitution and articles of incorporation of the Alliance provided that all of its assets on dissolution were to become the property of a German government agency for the dissemination of propaganda in foreign countries—the Deusches Auslands-Institut. The Alliance was a front organization for the Bund. It was designed to bring into its ranks persons who were sympathetic with the objectives of the Bund but who did not wish to be known as Bund members.

[5] "I find as a fact that the defendant was a member of the Milwaukee unit of the Bund; that he was so considered by its officers and members; that most of his interests and activities were in behalf of the Bund; and that, though completely aware of its aims and purposes, he deliberately vigorously promoted the objects of the Bund."

On February 22, 1937—less than two months before Knauer took his oath of naturalization—he was admitted to membership in the Alliance and became a member of its executive committee. His first action as a member was to volunteer the collection of newspaper articles that attacked the Alliance, Germany, and German-Americans. In 1937 and in the ensuing years Knauer wrote many letters and telegrams to those who criticized the Bund or the German government. In 1938 Knauer was elected vice-president of the Alliance and subsequently presided over most of its meetings. He was the dominant figure in the Alliance. In May 1937 the German consul presented to the Alliance the swastika flag which had been torn down at the Federation celebration the year before. Not long after his naturalization Knauer urged that the Alliance sponsor a sols'ice ceremony, a solemn rite at which a wooden swastika is burned to symbolize the unity of German people everywhere. In August 1937 the Alliance refused to participate in an affair sponsored by a group which would not fly the swastika flag. In May 1938 Knauer at a meeting of the Alliance read a leaflet entitled "America, the Garbage Can of the World". In 1939 he arranged for public showings of films distributed by an official German propaganda agency and depicting the glories of Nazism.[6]

There was an intimate cooperation between the Alliance and the Bund. The Bund camp was used for Alliance affairs and it was available to Alliance members. The Alliance supported various Bund programs. It supported the Youth Group of the

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[6] In 1937 he said to one witness, an American of German ancestry, "Now, isn't that wonderful what Hitler did over there? Don't you like it? When the American Government would take the same line, then it goes in Germany like Hitler did, that will be fine."

Before and after his naturalization he continuously preached the Nazi concept of racial unity among those of German blood. In 1937 he addressed members of the Alliance on the subject of the German volk, saying "With the rise and fall of the German nation, we rise and fall."

In 1940 he said in conversation with another witness, in reply to the witness' remark that he was an American citizen, "I am a German-American." When told that there was no hyphen in the word, he replied, "I lean toward and favor the Germans." When asked if he would fight for America if the Germans invaded this country, he refused to answer, saying, "I am a German-American".

In 1941 the Wisconsin Federation of German-American Societies pledged itself to uphold the Constitution of the United States, to maintain the democratic form of government, and to fight the totalitarian form of government and everything it stood for. Knauer issued an appeal to German-Americans, stating that that declaration constituted open warfare against the then German government and was a plan to create discord among Germans and to induce those in Germany to revolt against the German Reich.

Bund, and the Bund's solstice celebration. In 1939 the Youth Group of the Bund held a benefit performance for the Alliance. In 1940 it admitted the Youth Group of the Bund at the request of Froboese. Knauer consistently defended the Bund when it was criticized, when it was denied the use of a park or a hall, when its members were arrested or charged with offenses. In spite of the fact that Knauer knew the real aims and purposes of the Bund and was aware of its connection and Froboese's connection with the German government, he consistently came to its defense. Thus when a Wisconsin judge freed disturbers of a Bund meeting, he wrote the judge saying that the judge's remarks against the Bund were a "slander of a patriotic American organization." He subscribed to the official Bund newspaper and to a propaganda magazine issued and circulated by an agency of the German government. He held shares in the holding company of the Bund camp which was started in 1939. A photograph taken at the dedication of the new Bund camp in 1939 shows Knauer among a group of prominent Bund leaders with arm upraised in the Nazi salute. He owned a cottage at the Bund camp. He used the Nazi salute at the beginning and end of his speeches and at the Bund meetings.

In May 1938 Knauer and Froboese formed the American Protective League with a secret list of members. Knauer was elected a director. A constitution and by-laws were adopted and copies mailed by Knauer and Froboese to Hitler. One Buerk was a German agent operating in this country and later indicted for failing to register as such. In 1939 the German consulate in Chicago supervised the recruiting of skilled workers in that region for return to Germany for work in German industries. The German consul, Buerk, Froboese and Knauer conducted the recruiting. Knauer participated actively in interviewing candidates. At intervals farewell parties were given by Knauer and Froboese to the returning workers and their families.

Important evidence implicating Knauer in promoting the cause of Hitler in this country was given by a Mrs. Merton. She testified that, prompted solely by patriotic motives, she entered the employ of Froboese in 1938 in order to obtain evidence against the Bund and its members. The truth of her testimony was vigorously denied by Knauer. But the District Court believed her version, as did the Circuit Court of Appeals. And we are persuaded on a close reading of the record not only that her testi-

mony was strongly corroborated but also that Knauer's attempts to discredit her testimony do not ring true.[7]

Her testimony may be summarized as follows: She acted as secretary to Froboese in 1938. During the period of her employ Froboese and Knauer worked closely together on Bund matters. He helped Froboese in the preparation of articles for the Bund newspaper, of speeches, and of Bund correspondence. He helped Froboese prepare resolutions to be offered at the 1938 Bund convention calling for a white-gentile-ruled America. When Froboese left the city to attend the convention he told her to contact Knauer for advice concerning Bund matters. Letters signed by Froboese and Knauer jointly were sent to Hitler and other Nazi officials. One contained a list of 700 German nationals. One was the constitution and by-laws of the American Protective League which we have already mentioned. One to Hess said they had to lay low for awhile, that there was an investigation on. A birthday greeting to Hitler from Froboese and Knauer closed with the phrase, "In blind obedience I follow you." Knauer told her never to reveal that the Alliance and the Bund were linked together. One day she asked Knauer what the Bund was. His reply was that the Bund "was the Fuehrer's grip on American democracy." She reminded Knauer that he was an American citizen. He replied, "That is a good thing to hide behind."

We have given merely the highlights of the evidence. Much corroborative detail could be added. But what we have related presents the gist of the case against Knauer. If isolated parts of the evidence against Knauer were separately considered, they might well carry different inferences. His alertness to rise to the defense of Germans or of Americans of German descent could well reflect, if standing as isolated instances, attempts to protect a minority against what he deemed oppressive practices. Social and cultural ties might be complete and adequate explanations. Even utterances of a political nature which reflected tolerance or approval of the Nazi program in Germany might carry no sinister

[7] The people, whom Mrs. Merton at the time of her work for Froboese told of her mission, corroborated her. One of them on occasion took her to the Froboese home and saw her enter. At the time of the trial Froboese was dead. Mrs. Froboese denied that Mrs. Merton had ever worked for Froboese or that she had ever seen her. The testimony of another witness, however, related a conversation with Mrs. Froboese in which she said that a Mrs. Merton had worked for Froboese. Knauer persistently denied that he ever saw or knew Mrs. Merton. But Mrs. Merton's husband and neighbor identified Knauer as the man who called on Mrs. Merton at her home one day.

connotation, if they were considered by themselves. For many native-borns in this country did not awaken to the full implications of the Nazi program until war came to us. And as we stated in *Schneiderman* v. *United States, supra*, p. 139: "Whatever attitude we may individually hold toward persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the rights of free discussion and free thinking to which we as a people claim primary attachment."

But we have here much more than political utterances, much more than a crusade for the protection of minorities. This record portrays a program of action to further Hitler's cause in this nation—a program of infiltration which conforms to the pattern adopted by the Nazis in country after country. The ties with the German Reich were too intimate, the pattern of conduct too consistent, the overt acts too plain for us to conclude that Knauer was merely exercising his right of free speech either to spread tolerance in this country or to advocate changes here.

Moreover, the case against Knauer is not constructed solely from his activities subsequent to April 13, 1937—the date of his naturalization. The evidence prior to his naturalization, that which clusters around that date, and that which follows in the next few years is completely consistent. It conforms to the same pattern. We do not have to guess whether subsequent to naturalization he had a change of heart and threw himself wholeheartedly into a new cause. We have clear, convincing, and solid evidence that at all relevant times he was a thorough-going Nazi bent on sponsoring Hitler's cause here. And this case, unlike the *Baumgartner* case, is not complicated by the fact that when the alien took his oath Hitler was not in power. On April 13, 1937, Hitler was in full command. The evidence is most convincing that at that time, as well as later, Knauer's loyalty ran to him, not to this country.

The District Court properly ruled that membership in the Bund was not in itself sufficient to prove fraud which would warrant revocation of a decree of naturalization. Otherwise, guilt would rest on implication, contrary to the rule of the *Schneiderman* and *Baumgartner* cases. But we have here much more than that. We have a clear course of conduct, of which membership in the Bund was a manifestation, designed to promote the Nazi cause in this country. This is not a case of an underling caught up in the enthusiasm of a movement, driven by ties of blood and old asso-

ciations to extreme attitudes, and perhaps unaware of the conflict of allegiance implicit in his actions. Knauer is an astute person. He is a leader—the dominating figure in the cause he sponsored, a leading voice in the councils of the Bund, the spokesman in the program for systematic agitation of Nazi views. His activities portray a shrewd, calculating, and vigilant promotion of an alien cause. The conclusion seems to us plain that when Knauer forswore allegiance to Hitler and the German Reich he swore falsely.[8]

II. It is said, however, that the issue of fraud may not be tried in this case. An analogy is sought to be drawn to those cases where relief against a prior judgment, on the ground that perjured testimony was introduced at the trial, was denied. *United States* v. *Throckmorton*, 98 U. S. 61, 66. And see *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 421. But that rule goes no further than to say that the issue of fraud can become

[8] The following finding of the District Court is a fair conclusion from this record:

"The attachment of the defendant Knauer in the year 1931 to the aims and objects of Hitler's National Socialist movement, his allegiance and attachment to the Third Reich as manifested by his statements and his frequent use of the Nazi salute in public, his devotion to and promotion of the display of the swastika flag and ceremonies using it in symbolic pledge of fidelity to the Reich, his fierce concern over the good name and honor of the German race, his bitter and acrimonious denunciation of everything which interfered with or stood in the way of the fortunes of the German Reich, his belief in and advocacy of the German racial concept of duty and obligation of all Germans to the fatherland regardless of citizenship, his belief in and attachment to the principles and concepts of National Socialism, his espousal of the aims and objects of the German-American Bund and his active participation therein for the promotion of its aims and objects, his promotion and domination of the German-American Citizens' Alliance to further the aims and objects of the Bund, his uninterrupted effort by word and deed to politically activate our German-American people in the interests of the German Reich, his persistent efforts among German-Americans, by means of charitable programs, speeches and movie films, to revive in them a feeling of fidelity and loyalty to the German Reich, the assistance he rendered to the consular representatives of the Reich in the attainment of matters advancing German interests, his fervent devotion and blind attachment to the Fuehrer at a time when the German Reich was hostile to the United States, his lack of affection for or devotion to the United States, his cynical evaluation of his own American citizenship, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant at the time he filed his petition for naturalization did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, and at the time of his naturalization and at all times thereafter the defendant did not in fact renounce and abjure all allegiance and fidelity to the German Reich, but intended to retain and did retain allegiance and fidelity to the German government."

res judicata in the judgment sought to be set aside. We need not consider the extent to which a decree of naturalization may constitute a final determination of issues of fact, the establishment of which Congress has made conditions precedent to naturalization.[9] Those facts relate to the past—to behavior and conduct. But the oath is in a different category. It relates to a state of mind and is a promise of future conduct. It is the final act by which an alien acquires the status of citizen. It requires forswearing of allegiance in good faith and with no mental reservations. The oath being the final step, no evidence is heard at that time. It comes after the matters in issue have been resolved in favor of the applicant for citizenship. Hence, no opportunity exists for the examiner or the judge to determine if what the new citizen swore was true, was in fact false. Hence, the issue of fraud in the oath cannot become *res judicata* in the decree sought to be set aside. For fraud in the oath was not in issue in the proceedings and neither was adjudicated nor could have been adjudicated.

Moreover, when an alien takes the oath with reservations or does not in good faith forswear loyalty and allegiance to the old country, the decree of naturalization is obtained by deceit. The proceeding itself is then founded on fraud. A fraud is perpetrated on the naturalization court. We have recently considered the broad powers of equity to set aside a decree for fraud practiced on the court which granted it. *Hazel-Atlas Co,* v. *Hartford Co.*, 322 U. S. 238. The present suit is an equity suit. *Luria* v. *United States*, *supra*, pp. 27-28. But we need not consider in this case what the historic powers of equity might be in this situa-

[9] At the time of Knauer's naturalization the Act provided:

"It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record."

Act of June 29, 1906, § 4, subdivision Fourth, 34 Stat. 598. That provision was amended by § 6(b) of the Act of March 2, 1929, 45 Stat. 1512, 1513-1514.

tion. For Congress has provided that fraud is a basis for cancellation of certificates of naturalization in proceedings instituted by the United States.[10] The legislative history of that enactment shows that false swearing was one of the evils included in the statutory grounds for denaturalization.[11] That power was granted to give added protection against fraud committed on the naturalization courts. *United States* v. *Ness*, 245 U. S. 319, 324, 327. Cancellation of a certificate on the grounds of fraud includes cancellation for falsely swearing that the applicant forswore allegiance to his native country. Though the making of a false oath be called intrinsic fraud (see *United States* v. *Throckmorton*, *supra*), it is within the reach of the statute.

We have no doubt of the power of Congress to provide for denaturalization on the grounds of fraud. The Constitution grants

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[10] By § 15 of the Act of June 29, 1906, 34 Stat. 601, it was provided:

"That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. . . . ."

It was held in United States *v.* Ness, 245 U. S. 319, 325, that this statutory power to cancel certificates of naturalization is broader than that afforded in equity, independently of statute, to set aside judgments.

[11] H. Rep. No. 1789, 59th Cong., 1st Sess., p. 2:

"The conditions that have been revealed by special investigations of the frauds committed against the naturalization laws render wholly unnecessary any argument upon the necessity at this time of fully exercising all the authority in naturalization matters conferred by the Constitution upon Congress."

. . . . . .

"The worst and most glaring frauds have consisted in perjury, false impersonation, and the sale and use of false and counterfeit certificates of naturalization."

As stated by a sponsor of the measure on the floor of the House:

"The boon of American citizenship must not be cheapened by lax and unconventional methods of courts and public officers who administer the law, but once granted it should endure for all time. It is conferred by the Federal Constitution and by laws authorized by the Constitution. When citizenship is once legally granted, of course it can not be invalidated, and it ought not to be, but no one questions that it is within the power of the Government to provide for the cancellation of certificates of citizens that have been fraudulently obtained. A certificate tainted with fraud is in the sense of the law no certificate at all." 40 Cong. Rec. p. 7040.

The Court noted in United States *v.* Ness, 245 U. S. 319, 324, that "widespread frauds in naturalization," including "the prevalence of perjured testimony in cases of this character" led to the passage of this legislation.

Congress power "To establish a uniform Rule of Naturalization." Article I, Section 8. The power of denaturalization comes from that provision and the "necessary and proper" Clause in Article I, Section 8. See *Tutun* v. *United States*, 270 U. S. 568, 578. We do not have here a case where, after an alien has been naturalized, Congress provides new grounds which are invoked for cancellation of his certificate. Fraud—the basis of revocation with which we are now concerned—was a statutory ground for denaturalization when Knauer took his oath. Moreover, we are not faced with the question of what limits there may be to conditions for denaturalization which Congress may provide. A certificate obtained by fraud is clearly within the reach of Congressional power. As stated in *Johannessen* v. *United States*, 225 U. S. 227, 241: "An alien has no moral nor constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would not have been issued." And see *Luria* v. *United States*, *supra*, pp. 23-24; *United States* v. *Ness*, *supra*, p. 327. To hold otherwise would be an anomaly. It would in effect mean that where a person through concealment, misrepresentation or deceit perpetrated a fraud on the naturalization court, the United States would be remediless to correct the wrong. That would indeed put a premium on the successful perpetration of frauds against the nation. We cannot conclude that Congress, which may withhold the right of naturalization (*Tutun* v. *United States*, *supra*, p. 578), is so powerless. We adhere to the prior rulings of this Court that Congress may provide for the cancellation of certificates of naturalization on the grounds of fraud in their procurement and thus protect the courts and the nation against practices of aliens who by deceitful methods obtain the cherished status of citizenship here, the better to serve a foreign master.

Since fraud in the oath of allegiance which Knauer took is sufficient to sustain the judgment below, we do not reach the other questions which have been argued.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice BLACK concurring.

I am satisfied beyond all reasonable doubt, from the testimony and admissions of the petitioner himself, made in open court, that he had never at any time, either before or after his naturalization, deviated from his wholehearted allegiance to, and constant service of, the German Nazi Government.

I realize, as the dissent in this case emphasizes, the dangers inherent in denaturalizations. Had this judgment rested on the petitioner's mere philosophical or political beliefs, expressed or unexpressed, I should not concur in its affirmance. But petitioner's admissions as to his own conduct, leave me in no doubt at all that he was, even in obtaining naturalization, serving the German government with the same fanatical zeal which motivated the saboteurs sent to the United States to wage war. I am unable to say that Congress is without Constitutional power to authorize courts after fair trials like this one, to cancel citizenship obtained by the methods and for the purposes shown by this record.

Mr. Justice RUTLEDGE, dissenting.

For reasons I have suggested elsewhere,[1] but which now are squarely involved, I cannot bring myself to concur in this judgment.

My concern is not for Paul Knauer. The record discloses that he has no conception of, much less attachment to, basic American principles or institutions. He was a thorough-going Nazi, addicted to philosophies altogether hostile to the democratic framework in which we believe and live. Further, he was an active promoter of movements directed to securing acceptance of those ideas here and incorporating them in our institutions. And in this case, by contrast with those of *Schneiderman* and *Baumgartner*,[2] it would be hard to say that the evidence would not sustain a finding that he falsely took the oath of allegiance or that he never in his heart renounced his prime fealty to Adolph Hitler and Nazi Germany. Nor, in my opinion, can it be thought unequal to supporting a conclusion that, from a time prior to his admission to citizenship in 1935 until at any rate the assault on Pearl Harbor, Knauer was in the active service of the Nazi regime.

[1] Schneiderman v. United States, 320 U. S. 118, concurring opinion at 165.
[2] See note 1; Baumgartner v. United States, 322 U. S. 665.

promoting its cause here, and also for a short time in Germany, as the object of his first loyalty.

If therefore in any case a naturalized citizen's right and status can be revoked, by the procedure followed here or perhaps at all, it would be in such a case as this. But if one man's citizenship can thus be taken away, so can that of any other. And even in this case it would be in large part for his political convictions and acts done openly in espousal of them. Not merely Knauer's rights, but those of millions of naturalized citizens in their status and all that it implies of security and freedom, are affected by what is done in this case. By the outcome they are made either second-class citizens or citizens having equal rights and equal security with others.

No native-born American's birthright could be stripped from him for such a cause or by such a procedure as has been followed here. Nor could he be punished with banishment. To suffer that great loss he must forfeit citizenship by some act of treason or felony and be adjudged guilty by processes of law consistent with all the great protections thrown around such trials. Not yet has attempt been made to do this otherwise. Nor in my opinion could it be done, except for some such cause or by any less carefully safeguarded procedure.

In no instance thus far has our system tolerated destruction of that right of the native-born, except by voluntary surrender, on account of convictions held, views expressed, or acts done in promoting their acceptance falling short of treason as defined in the Constitution[3] or conviction for felony. Nor has it thus far brought about that extinction by forms of trial other than those provided for such offenses. Moreover, even in such cases, although the penalty may be death or loss of the rights of citizenship, we have not yet imposed those penalties altogether foreign to our institutions, namely, deportation and exile. For one cause and one only have they been provided, namely, the loss of the naturalized citizen's status.

I do not find warrant in the Constitution for believing that it contemplates two classes of citizens, excepting only for two purposes. One is to provide how citizenship shall be acquired, Const., Art. I, § 8; Art. XIV, § 1, the other to determine eligibility for the presidency. Const., Art. II, § 1. The latter is the

[3] Constitution, Art. III, § 3. See Cramer v. United States, 325 U. S. 1.

only instance in which the charter expressly excludes the naturalized citizen from any right or privilege the native-born possesses.[4] *Luria* v. *United States*, 231 U. S. 9, 22. I do not think there is any other in which his status is, or can be made, inferior.

Congress, it is true, is empowered to lay down the conditions for admission of foreign-born persons to citizenship. In this respect it has wide authority. But it is not unlimited. Nor is Congress given power to take away citizenship once it is conferred, other than for some sufficient act of forfeiture taking place afterward. Naturalized citizens are no more free to become traitors or criminals than others and may be punished as they are when they commit the same offense. But any process which takes away their citizenship for causes or by procedures not applicable to native-born citizens places them in a separate and an inferior class. That dilemma is inescapable, though it is one not heretofore faced squarely. Unless it is the law that there are two classes of citizens, one superior, the other inferior, the status of no citizen can be annulled for causes or by procedures not applicable to all others.

To say that Congress can disregard this fact and create inequalities of status as between native and foreign-born citizens by attaching conditions to their admission, to be applied retroactively after that event, is only to say in other words that Congress by using that method can create different, and inferior, classes of citizens. I have heretofore pointed out why citizens with strings attached to their citizenship, for its revocation, can be neither free nor secure in their status. *Schneiderman* v. *United States*, 320 U. S. 118, concurring opinion at 165. All that is said there, in that respect, applies here or to any procedure by which citizenship may be annulled. In my opinion the power to naturalize is not the power to denaturalize. The act of admission must be taken as final, for any cause which may have existed at that time. Otherwise there cannot but be two classes of citizens, one free and secure except for acts amounting to forfeiture within our tradition; the other, conditional, timorous and insecure because blanketed with the threat that some act or conduct, not amounting to forfeiture for others, will be taken retroactively to show that some prescribed condition had not been fulfilled and be so adjudged. I do not think such a difference was contemplated when Congress was

[4] Cf. Constitution, Art. I, § 2; Art. I, § 3, providing respectively that no person shall be a Senator who shall not have been nine years a citizen and, in the case of Representatives, seven years.

authorized to provide for naturalization and the terms on which it should be granted.

But if I may be wrong in this, certainly so drastic a penalty as denaturalization, with resulting deportation and exile and all the attendant consequences, should not be imposed by any procedure less protective of the citizen's most fundamental right, comprehending all others, than must be employed to take away the native-born citizen's status or the lesser rights of the foreign-born citizen. If strings may be attached to citizenship and pulled retroactively to annul it, at the least this should be done only by those forms of proceeding most fully surrounded with the constitutional securities for trial which are among the prized incidents of citizenship. It is altogether anomalous that those safeguards are thrown about the foreign-born citizen when, for some offense, his liberty even for brief periods is at stake, but are withdrawn from him when all that gives substance to that freedom is put in jeopardy.

The right of citizenship is the most precious of all. The penalty for denaturalization is always harsh. Often it is more drastic than any other. It is also unique for this situation. For the required measure of security, the native-born citizen can be deprived of his status only by the rigidly safeguarded trial for treason or for conviction of a criminal offense which brings loss of rights as a citizen. To these procedures, with the same penalties and for the same causes, the foreign-born citizen is subject; but also by them he is protected. He should not be less secure when it is sought to annul his citizenship than when the effort is to bring about its forfeiture. Nor, in either event, should his procedural safeguards be less than when the same consequence, in substance, is inflicted upon the citizen native born.

The procedure prescribed for and followed in this case was not in accord with those standards. I think nothing less is adequate, or consistent with the constitutional status of citizenship, for the purpose of taking it away.

If this means that some or even many disloyal foreign-born citizens cannot be deported, it is better so than to place so many loyal ones in inferior status. And there are other effective methods for dealing with those who are disloyal, just as there are for such citizens by birth.

Accordingly, I would reverse the judgment.

Mr. Justice MURPHY joins in this ~~opinion~~ dissent.